EXHIBIT III

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

------X

MCDONALD'S CORPORATION,

Plaintiff,

-against- Index No.:

1:19-cv-06471

VANDERBILT ATLANTIC HOLDINGS LLC,

Defendant.

REMOTE DEPOSITION
OF
AMANDA AARON

Reported by: Robin LaFemina, RPR, CLR

Job No.: 787400

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 7
                           January 21, 2022
 8
                          10:13 a.m. Eastern Time
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11
               Remote Deposition of AMANDA AARON,
12
     taken before Robin LaFemina, a Registered
13
     Professional Reporter, Certified LiveNote
14
     Reporter and Notary Public.
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Page 3
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      APPEARANCES:
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     BY: HOWARD S. KOH, ESQ.
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17
18
    ALSO PRESENT:
19
          STACY HOWARD, In-House Counsel,
20
          McDonald's Corporation
21
          SHARYL AMOVITZ, PARALEGAL, McDonald's
22
          Corporation
23
          MICHAEL HEDDEN, Expert Witness for
24
         Vanderbilt
25
          JOSHUA PINKUS, Magna Tech
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Page 4
 1
 2
                   THE COURT REPORTER: Counsel,
 3
          do you agree that I can swear in the
 4
          witness remotely?
 5
                 Mr. Koh?
                 MR. KOH: Yes.
 7
                 THE COURT REPORTER: Mr. Walsh?
 8
                 MR. WALSH: Yes, I agree.
 9
     AMANDA AARON,
10
          called as a Witness, having been first
11
          duly sworn by Robin LaFemina, a Notary
12
          Public within and for the State of New
13
          York, was examined and testified as
14
          follows:
15
                 THE COURT REPORTER: Okay.
                                              You
16
          may begin.
17
                 MR. KOH: Okay.
18
    EXAMINATION BY
19
     MR. KOH:
20
                 Good morning, Ms. Aaron.
          Q.
21
     name is Howard Koh. I'll be taking your
22
     deposition in this matter, McDonald's
23
     Corporation against Vanderbilt Atlantic
24
     Holdings LLC.
25
                 Am I correct that you've been
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Page 5 1 Aaron retained as an expert witness on behalf of -- and to prepare a report on behalf of McDonald's Corporation? 5 Α. Yes. And who retained you? 7 I was retained by Pashman & Α. Stein by Brendan Walsh. 8 Have you ever been deposed Q. before? 10 11 Α. Just once. 12 Q. Okay. 13 Have you ever been deposed by videoconference before? 14 15 Α. Yes. 16 Oh, okay. So you're somewhat 17 familiar. I'll be asking you a series of 18 questions. If you at any point are confused 19 by the question or do not hear it, please 20 speak up and I will attempt to repeat or 21 rephrase. 22 Is that fair? 23 Α. Yes. 24 Q. We will also be showing you a 25 series of exhibits throughout this



Page 6 1 Aaron 2 deposition. You will be able to access them on the Agile Law platform which we logged into before we got online. If you have any 5 issues with that, please speak up, we want to be sure that you can see and manipulate 7 the documents without difficulty. 8 Last thing, it's important that 9 we speak one at a time, particularly on 10 video depositions, court reporters can't 11 take down two people speaking at once. 12 Is that fair? 13 Yes. Α. And if you need a break at any 14 Q. 15 time, please speak up, and once there is no 16 pending question on the record, we'll be 17 able to arrange the break. 18 Does that sound fair? 19 Α. Absolutely. 20 Q. Okay. 21 Are you alone in the room where 22 you're being deposed? 23 Α. I am. 24 0. And other than the Agile Law platform and the Zoom platform for this 25



Page 7 1 Aaron 2 deposition, do you have anything open on any 3 computer screen? Just the Zoom link. 5 Q. Okay. And do you have your cell phone 7 with you? 8 Α. It's next to me and it's on 9 airplane mode. 10 Okay. Very good. I was going 11 to suggest that. 12 Tell me, what did you do to 13 prepare for today's deposition? 14 I reread my expert report, I Α. 15 reread the depositions of Tom Tener and 16 Sharon Locatell, I had a meeting -- two 17 meetings with Pashman Stein and McDonald's, 18 and I think -- I can't think of anything 19 else. 20 These two meetings with Pashman Q. 21 Stein and McDonald's, let's talk about the 22 first meeting. When was that? 23 I believe it was last week, on Α. 24 Friday. 25 And was it in person or by Q.



Page 8 1 Aaron videoconference or telephone conference? 3 Videoconference. Α. And how long did it last? 5 Α. I believe it was just shy of three hours. 7 Q. And who was present at that 8 meeting? Myself, Brendan Walsh, Stacy 10 Howard and Mike Meyer. 11 Anyone else present at that 12 meeting? 13 Α. Not that I recall. 14 Did anyone at that meeting show 15 you any documents to review? 16 Α. No. 17 The second meeting, when was Q. 18 that? 19 That was Tuesday of this week. Α. 20 And was that also by Q. videoconference? 21 22 Α. Yes. 23 And who was present -- how long did that meeting last? 24 25 Α. I believe that meeting lasted



Page 9 1 Aaron 2 around two hours. 3 0. Who was present for the meeting? Α. The same people were present. 5 Q. Did you meet with any employees or representatives of McDonald's who you 7 have not already named in order to prepare 8 for this deposition? Α. No. 10 Did you review any other 11 materials to prepare for this deposition 12 other than what you've told us, which would 13 be your report and the transcripts of Tom 14 Tener and Sharon Locatell's deposition? 15 Not that I recall. Α. 16 Have you ever spoken to Carol 0. 17 DeMarco? 18 Α. No. 19 Describe your educational 20 background for us, please. 21 I have an undergraduate degree 22 from Columbia University, a graduate degree 23 from New York University and I have 24 postgraduate work, coursework toward the MAI 25 designation from the Appraisal Institute.



		Page 10
1	Aaron	
2	Q. When did you get your	
3	undergraduate degree?	
4	A. 1993.	
5	Q. When did you get your graduate	
6	degree?	
7	A. 1995.	
8	Q. And when did you achieve the MAI	
9	designation?	
10	A. 2011.	
11	Q. What does an MAI designation	
12	signify?	
13	A. An MAI designation is a	
14	professional designation from the Appraisal	
15	Institute, that's our national professional	
16	organization that promotes the appraisal	
17	profession. The MAI designation is the	
18	highest designation that signifies expertise	
19	in a wide range of commercial and	
20	residential property types.	
21	Q. And you also I think are a	
22	member of an organization called the	
23	Counselors of Real Estate?	
24	A. I am.	
25	Q. And what is that?	



Page 11 1 Aaron 2 That is also a professional 3 organization for not just appraisers, but a 4 wide range of real estate professionals. 5 That organization admits members at the recommendation of other professionals who 7 are already members and it signifies that 8 you play a significant role in counseling 9 clients about high level real estate issues. 10 Q. When did you earn your CRE, 11 Counselors of Real Estate, designation? 12 In 2020. Α. 13 0. And when did you earn your MAI 14 designation? In 2011. 15 Α. 16 What professional licenses do Q. 17 you hold? 18 I hold the state certified Α. general real estate appraiser license for 19 20 New York. 21 Are you licensed in any other 22 jurisdictions? 23 I am not. Α. 24 Have you ever testified as an 25 expert before?



			Page 12
1		Aaron	
2	A. I ha	ve.	
3	Q. How	many times?	
4	A. Four	times including the	
5	deposition, the	video deposition.	
6	Q. Okay		
7	And	in what matters were those?	
8	A. Well	, one are you asking	
9	specifically the	addresses of the	
10	properties?		
11	Q. Let	me break it down a little	
12	bit more succinc	tly for you if I can.	
13	All	right. I understand you've	
14	testified before	the Kings County Civil	
15	Court in a case	called Agudus Chasidei	
16	Chabad of the Un	ited States against	
17	Congregation Lub	eavitch, Inc.	
18	Was	that testimony deposition	
19	testimony or tri	al testimony or some other	
20	testimony?		
21	A. That	was trial testimony.	
22	Q. Okay	· •	
23	Did	you qualify as an expert in	
24	that case?		
25	A. I di	d.	



Page 13 1 Aaron 2 Q. Okay. 3 And, generally speaking, what 4 was the subject matter of that case? 5 Α. The subject matter of that case was the World Headquarters of the Chabad 7 Lubavitch Organization in Brooklyn, New York. 8 What was the issue about which 0. 9 you were testifying as an expert? 10 The issue was the fair market Α. 11 rental value of this property or of a 12 portion of the property. 13 0. You've also testified in a case 14 called Mercos L'Inyonei v. Lubavitch, Inc., 15 also in Kings County, Supreme Court. 16 Α. That's the same. That's the 17 same. 18 That's the same matter? 19 Α. Yes. 20 Q. Okay. 21 Well, tell me the other -- you 22 testified earlier that you testified in a 23 deposition once before. Was that as an expert? 24 25 Yes, it was. Α.



Page 14 1 Aaron 2 Q. Okay. 3 And what was the property at 4 issue in that matter? 5 Α. I don't know the address offhand. It was quite some time ago, 7 between 2013 and 2015. I believe it was 8 It was an apartment, multi-family 9 apartment property in Woodside, Queens. 10 And what was the issue on which 11 you were retained to testify as an expert? 12 The fair market value of the 13 property. There was a family dispute as to 14 the value in association with an estate. 15 Did that -- did you also testify Ο. 16 at a trial in that matter? 17 I did not. 18 So you said you had testified at 19 trial at deposition four times. 20 identified two times. What were the other 21 two times? 22 In 2015, I testified in U.S. 23 Bankruptcy Court about the value of two 24 multi-family properties in Brooklyn, New 25 York, and in 2013 I testified for Brooklyn



Page 15 1 Aaron 2 Supreme Court about the rental value of a 3 piece of land for a short-term period while 4 the land was used by a developer of an 5 adjacent building. Q. Okay. 7 And what was the subject of the 8 2014 testimony in bankruptcy? What was your 9 expertise? 10 The subject was the value of two 11 multi-family properties in Brooklyn. 12 Q. Okay. 13 So that would have been the sale 14 value? 15 That was the sale value; yes. Α. 16 Q. Okay. 17 And in the 2013 testimony before 18 the Supreme Court of the State of New York 19 in Brooklyn, what was the subject of that 20 testimony? 21 That was land, fair market 22 rental value. 23 Fair market rental value of raw 24 land? 25 Α. Yes.



			Page 16
1	2	Aaron	
2	Q. You curre	ently work for your own	
3	firm, Aaron Valuation	n?	
4	A. I do.		
5	Q. And how	long have you done that?	
6	A. Since la	ate 2010, early 2011.	
7	Q. Prior to	that, where did you	
8	work and what did you	ou do?	
9	A. I worked	d at a firm called	
10	Leitner Group and I	was a commercial real	
11	estate appraiser.		
12	Q. And how	long did that job last?	
13	A. 12 years	5 .	
14	Q. So that	would have taken us back	
15	to approximately 199	18?	
16	A. That's co	correct.	
17	Q. And before	ore that, where did you	
18	work?		
19	A. Before the	chat, I did not work in	
20	real estate. I worke	ed at Cahner's	
21	Publishing.		
22	Q. Okay.		
23	In the pa	past, have you ever been	
24	retained in your capa	pacity as an appraiser to	
25	work for McDonald's?	,	



			Page 1	17
1		Aaron		
2	Α.	No.		
3	Q.	So this is the first assignment		
4	you've ever	taken for McDonald's?		
5	Α.	Yes.		
6	Q.	In the past, have you ever been		
7	retained to	work for Pashman Stein?		
8	Α.	No.		
9	Q.	So you've said that you've		
10	participated	d testifying as an expert in fair		
11	market renta	al proceedings; is that correct?		
12	Α.	Yes.		
13	Q.	Have you ever also participated,		
14	not as a tes	stifying expert, but as an		
15	appraiser in	n a fair market rent reset		
16	process?			
17	Α.	I have.		
18	Q.	Approximately how many times?		
19	Α.	Approximately ten times.		
20	Q.	And that is ten times in		
21	addition to	the times that you were retained		
22	as an expert	t to testify?		
23	Α.	Yes.		
24	Q.	And these ten times where you		
25	participated	d in a fair market rental value		



Page 18 1 Aaron 2 reset, what was your role? 3 I've been attending -- I've been Α. 4 a party appointed appraiser and I've been a 5 neutral appraiser. How many times have you served 7 as a neutral? 8 Α. I have been engaged as a neutral 9 seven times, I have fully served through the 10 process two times, two are ongoing. 11 The two times that you are a 12 neutral are still ongoing? 13 I've been engaged recently as a Α. neutral for two matters. 14 15 Q. Okay. 16 So am I correct that as of 17 today, while you've been engaged as a 18 neutral before, none of those matters have 19 gone to completion? 20 Two of them have. Α. Two of them have gone to 21 0. 22 completion? 23 Α. Yes. 24 Q. Okay. 25 Actually three, three of them Α.



Page 19 1 Aaron 2 have now that -- to correct the record. Okay. Three of them have gone 3 Q. 4 to completion. 5 And approximately how many times have you been a party appraiser? 6 7 Six or seven times. Α. 8 Q. Okay. And in that context, have you represented both landlords and tenants? 10 11 Α. I have. 12 How many times have you Q. 13 represented landlords? 14 It's about even. Three or four Α. 15 of each. 16 Have you ever performed an Q. 17 appraisal review before this project? 18 Α. Yes. 19 How many times? Ο. 20 Α. Many. Difficult to count the 21 amount of appraisal review assignments I've 22 completed. 23 Q. Okay. 24 And did these appraisal reviews 25 include reviews of appraisals on ground rent



Page 20 1 Aaron 2 resets? 3 Α. Yes. 4 And when you -- and when you 5 were engaged -- excuse me a second. And when you were engaged as a 7 party appraiser, did those situations 8 involve ground rent resets? Α. Some. 10 0. How many? 11 Two properties, although it was 12 more than two engagements. 13 How many engagements? Q. 14 Α. Many. It was a years long 15 multi-engagement, multi-phase ground 16 resetting process. 17 But only two properties? Q. 18 Α. Yes. 19 And where were these two 0. 20 properties located? 21 These two properties were in 22 Roosevelt Island. 23 And with respect to the other 24 ground rent reset proceedings where you 25 appeared as a party appraiser, where were



Page 21 1 Aaron 2 those properties? 3 Those are the two -- I -- for a Α. 4 ground rent reset proceeding, I had the two 5 on Roosevelt Island and I believe there's only one where I was a party -- one other 7 where I was a party appointed appraiser, and 8 it was specifically a land ground rent 9 reset, and that was in Brooklyn, New York. 10 Q. And what was the address of that 11 property? 12 I don't recall the address. Ιt 13 was on 4th Avenue. 14 Q. And when you served as a 15 neutral, have you been a neutral in a ground 16 rent reset proceeding? 17 Not specifically a ground rent 18 reset; no. 19 0. Have you ever met Tom Tener? 20 Α. Yes. 21 Q. And how do you know Tom Tener? 22 I know Tom through our joint 23 service on the Metropolitan New York 24 Appraisal Institute Chapter Board and I know him from before that time informally from 25



Page 22 1 Aaron chapter events and courses. 3 Have you ever been involved in 4 an appraisal proceeding where Tom Tener was 5 also involved? Α. 7 Before this assignment, have you 8 ever had any occasion to review Tom Tener's 9 work? 10 Yes. Α. 11 And when was that? 12 I -- in my -- when I was in 13 Leitner Group, I performed third party review appraisal for lenders and I reviewed 14 15 his work and Shaun Kest's work as a third 16 party appraisal reviewer then. I don't 17 recall any other specific instances. 18 And when you reviewed Mr. Tener 19 and Mr. Kest's work, how did you evaluate it? 20 I don't remember specifically. Α. 21 There's always some back and forth in 22 reviews. 23 Did you ever when you were at 24 Leitner in reviewing Tom Tener and Sean 25 Kest's work find the work to be not



Page 23 1 Aaron reasonable or not credible? 3 I don't specifically recall. 4 So you can't recall ever until Ο. 5 this assignment finding Mr. Tener's work not reasonable and credible; is that correct? 7 MR. WALSH: Objection to the 8 form. 0. You can answer. 10 I specifically recall having 11 conversations with them about issues with 12 their appraisal, but I don't recall 13 specifically declaring their work not 14 credible or reasonable. 15 So what do you recall about the 16 conversations you had with them about their 17 appraisal? 18 MR. WALSH: Objection to form. 19 Α. Simply that those conversations 20 occurred. 21 Q. Okay. 22 Can't remember anything else 23 about those conversations? 24 Α. Not specifically. 25 Q. Okay.



		_
		Page 24
1	Aaron	
2	Do you know Sharon Locatell?	
3	A. I do.	
4	Q. How do you know Ms. Locatell?	
5	A. Similarly, Sharon Locatell and I	
6	served on the Metropolitan New York	
7	Appraisal Institute Chapter Board together.	
8	I have known her through most of my	
9	appraisal career. It is a very small	
10	community of appraisers in New York City and	
11	we trade have traded comparable data. I	
12	also know her because we both live in	
13	Brooklyn, New York.	
14	Q. Have you ever participated in	
15	any appraisal proceedings with Ms. Locatell?	
16	A. I have.	
17	Q. And what proceeding was that?	
18	A. There were at least three	
19	proceedings.	
20	Q. Describe each time you've	
21	participated in an appraisal proceeding with	
22	Ms. Locatell and what roles each of you had.	
23	A. There were four proceedings	
24	actually. There was a matter, a ground rent	
25	reset for a KFC, the one on 4th Avenue in	



Page 25 1 Aaron 2 Brooklyn, I was the party appointed 3 appraiser. Ms. Locatell was the third or 4 neutral appraiser. There was a matter 5 relating to the land value of a development site on the upper east side of Manhattan. 7 We were both party appointed appraisers. 8 There was no proceeding in that matter. 9 was the neutral on a land valuation -- this 10 was a mediation, in lower Manhattan, near 11 the World Trade Center, the value of the 12 site, it was a litigation, a family dispute 13 about the value of the property. I was the 14 Sharon was a party appointed neutral. 15 appraiser. And there was a fair market rent 16 reset proceeding regarding a retail store in 17 Manhattan. I was the neutral and Sharon was 18 a party appointed appraiser. 19 0. Earlier in your testimony, you 20 mentioned something called the Metropolitan 21 New York Chapter Board. What is that? 22 The Metropolitan New York Chapter of the Appraisal Institute is one of 23



many chapters across the country. It has a

national organization, there's regional

24

25

Page 26 1 Aaron 2 organizations and then there's chapters. 3 This chapter covers the metropolitan New 4 York area, but specifically the five 5 boroughs of New York City, and the Board of Directors, each member serves I believe a 7 three-year term, and Sharon, Tom and I have 8 all been in leadership positions within the 9 local chapter. 10 How do you get to be a member of 11 this Board? 12 Every year the Board goes 13 through a nomination process. 14 nominating committee puts forth names of 15 appraisers who -- to put forth into 16 membership roles. 17 So is it fair to say that in 18 order to become a member of this Board, you 19 are essentially selected by your colleagues, 20 your professional colleagues? 21 Α. That's fair to say. 22 Did you have any role in 23 selecting Sharon Locatell for this Board? 24 Α. I did not. 25 0. Did Sharon Locatell have any



Page 27 1 Aaron role in selecting you for this Board? Not that --3 Α. MR. WALSH: Objection to form. 5 Α. Not that I know of. Did you have any role in 7 selecting Tom Tener as a member of this 8 Board? Α. No. 10 Did Tom Tener have any role in 11 selecting you as a member of this Board? 12 I don't believe so. 13 Q. Have you now told us all of the projects you've worked on with Sharon 14 Locatell? 15 16 Α. That I can recall. 17 Q. Okay. 18 You prepared the expert report in this matter; correct? 19 20 Α. Yes. 21 Okay. I am going to bring up on Q. 22 the exhibit platform the expert report. 23 (Exhibit YY, Expert Report of 24 Amanda Aaron, marked for 25 identification, as of this date.)



Page 28 1 Aaron 2 And let me know if you have it 0. now. You should be able to see it. 3 4 Yes. Α. 5 Q. Okay. Is this the expert report that 7 you prepared? 8 Α. Yes. 9 What standards did you apply Q. 10 when preparing this report? 11 MR. WALSH: Objection to the 12 form. 13 Ο. You can answer. 14 This form is in conformance with Α. 15 USPAP, specifically Standards 3 and 4. 16 Q. And what do USPAP Standards 3 17 and 4 provide? 18 MR. WALSH: Objection to the 19 form. 20 These are the guidelines related Α. 21 to preparing appraisal review reports. 22 Did you consider any other standards when preparing these appraisal 23 24 review reports? MR. WALSH: Objection to the 25



		Page 29
1	Aaron	
2	form.	
3	Q. You may answer.	
4	A. Not that I specifically recall.	
5	Q. Okay.	
6	Did you consider the Code of	
7	Professional Ethics of the Appraiser	
8	Institute?	
9	A. I did. Thank you for reminding	
10	me. Both Standards of Professional Practice	
11	and the Code of Professional Ethics of the	
12	Appraiser Institute.	
13	Q. Did you consider any other	
14	standards?	
15	A. Not that I recall.	
16	Q. What documents did you review in	
17	order to prepare this expert report?	
18	MR. WALSH: Objection to the	
19	form.	
20	MR. KOH: Let me step back.	
21	Q. Did you review any documents in	
22	connection with the preparation of this	
23	expert report?	
24	A. I did.	
25	Q. Can you tell me what they are?	



Page 30 1 Aaron 2 Those documents are listed in Α. 3 the expert report, and it would be helpful to look at those as we --4 5 Q. I believe it's page 39, which you can manipulate. 7 Α. Yes. I also have a printout of 8 the --Well, that makes -- that might Q. 10 make it easier. 11 Yeah. So specifically I 12 reviewed the Complaint in this case and the 13 Answer and Counterclaim. I reviewed the 14 list of documents here that were produced in 15 this case and the deposition transcripts of 16 Tom Tener and Sharon Locatell. 17 Did you review any other deposition transcripts? 18 19 Α. No. 20 Why not? Q. 21 Α. I -- well, I wasn't asked to. 22 Q. Okay. 23 And by the person who asked you to review these documents, was that the 24 25 Pashman Stein law firm?



		Page 31
1	Aaron	
2	A. Yes.	
3	Q. Did you review Sharon Locatell's	
4	work file?	
5	A. I did.	
6	Q. Okay.	
7	The complete file?	
8	A. I had access to the complete	
9	file and I reviewed many documents in the	
10	work file. I can't say that I reviewed the	
11	complete file. That would have been quite	
12	an undertaking.	
13	Q. Did you review Tom Tener's work	
14	file?	
15	A. I did.	
16	Q. Did you review all of the	
17	documents in Tom Tener's work file?	
18	A. I can't say whether it was all	
19	of the documents. I reviewed many documents.	
20	Q. How did you decide which	
21	documents to review and which documents	
22	maybe not to review when you reviewed Tom	
23	Tener's file?	
24	MR. WALSH: Objection to the	
25	form.	



Page 32 1 Aaron 2 I had access to a database Α. 3 called DISCO, which I believe included all 4 of the documents that had been produced in 5 relation to this case, and DISCO allows for searching and sorting based on certain 7 filters, such as the author of a document, 8 whether a document was a PDF or an e-mail or 9 an Excel file or a Word file, and as I was 10 reviewing the reports of Tom Tener and 11 Sharon Locatell, I was also searching the 12 database for specific types of work file 13 documents such as e-mail exchanges that may 14 have had a certain text string or Excel 15 files, and I also -- when I couldn't find a 16 specific document that I was looking for, I 17 did occasionally ask for Pashman Stein's 18 assistance in finding documents. 19 0. When preparing an appraisal 20 report, does an appraiser have any 21 discretion in the preparation of that 22 report? 23 Objection to the form. MR. KOH: 24 Α. Of course. Of course an 25 appraiser has discretion in preparing the



Page 33 1 Aaron 2 report. 3 Are there certain aspects of the 4 analysis where discretion is permitted and 5 others where discretion is not permitted? MR. KOH: Objection to form. 7 That's a very general question, Α. 8 I'm not sure -- I'm not sure how to answer 9 There's no specific set of rules that 10 appraisers will have discretion in this 11 area, but not that area. 12 Q. Okay. 13 Is it possible for two 14 appraisers to appraise a single piece of 15 property and come up with differing values? 16 Yes, there -- yes, appraisers 17 often come up with differing values. 18 There's something that we refer to as the range of reasonableness. 19 20 And what is the range --Q. 21 Α. And --22 Q. I'm sorry. I didn't mean to cut you off. 23 24 Α. A range of reasonableness is, 25 you know, there's often a spread of values



Page 34 1 Aaron 2 that reasonable appraisers could come to the 3 same conclusions within, having undertaken 4 the same scope of work, and so there are 5 often differing opinions of value within this range. 7 How does an appraiser know what 8 the range of reasonableness is for a 9 particular assignment? 10 Well, this goes to -- this goes 11 to scope of work and it goes to all the 12 training that we have as appraisers about 13 what constitutes a credible and reasonable appraisal report, the kind of data and 14 15 research and analysis that needs to go into 16 an appraisal report, so if an appraiser 17 hasn't undertaken that -- the appropriate 18 scope of work or the appropriate amount of 19 research, it can often lead to -- or if the 20 appraiser doesn't have competency in 21 appraising this property type or within a 22 geographic area, a value can fall outside 23 this range. 24 0. You said if the appraiser hasn't undertaken the appropriate scope of work or 25



Page 35 1 Aaron 2 the appropriate amount of research. 3 you know when the appraiser has taken the 4 appropriate scope of work? 5 Well, each assignment -- each assignment is -- involves a process of 7 determining the appropriate scope of work, 8 the appraiser is the one that determines the 9 scope of work, and then negotiates or 10 renegotiates scope of work with the client 11 because scope of work can evolve as new 12 facts and data come to light in an 13 assignment, and then the appraiser, as the 14 scope of work changes or depending on the 15 particular scope of work, based on the 16 appraiser's training and judgment, the scope 17 of work needs to be appropriate to the 18 appraisal problem. 19 0. And how do you determine whether 20 the scope of work is appropriate to the 21 appraisal problem? 22 Well, this is -- this is the 23 foundation of our years of training and 24 education. I mean, the courses that we take 25 and that I teach train an appraiser to



Page 36 1 Aaron 2 determine which methodologies are appropriate to which appraisal problem. 3 4 So is it something that's Ο. 5 generally left to the appraiser's judgment? MR. WALSH: Objection to the 7 form. 8 Each appraiser -- yes, each Α. 9 appraiser is responsible for determining the 10 appropriate scope of work and that matches 11 the appraisal problem. 12 And what about the amount of 13 research? Is that something that is also generally left to the appraiser's judgment? 14 15 MR. WALSH: Objection to the 16 form. 17 Well, I'm not sure what you mean 18 by appraiser's judgment in this specific 19 context. 20 Q. I'll try to make it more simple. 21 How does an appraiser know when 22 an appropriate amount of research has been 23 performed? 24 Α. The appraiser knows that an 25 appropriate amount of research has been



Page 37 1 Aaron 2 performed when each assumption and data 3 point in the appraisal is well supported and when there is little doubt as to the 4 5 credibility of the value conclusions. In an earlier answer, you 7 mentioned you do some teaching concerning 8 appraisals. What have you taught? 10 Α. I have taught the business 11 practices and ethics course through the 12 Appraisal Institute, I have taught the 13 general sales comparison approach course 14 many times, and I have taught the 15 introduction to the HP 12C calculator course 16 which is really an income approach review 17 course on financial functions that can be 18 performed both by Excel and a calculator. 19 0. Any other courses that you've 20 taught? 21 No. I'm authorized to teach the 22 Fair Housing/Fair Lending course. This is a 23 new course. But I have not taught it yet. 24 And how many times have you 25 taught these courses?



		Page 38
1	Aaron	
2	A. Dozens.	
3	Q. I'm sorry?	
4	A. Dozens of times.	
5	Q. Dozens? Okay.	
6	Let's take a look at your	
7	report, please, and if you look on page 4 of	
8	the report, in the section titled Summary of	
9	Conclusions, you write: All of my opinions	
10	expressed herein were reached to a	
11	reasonable degree of certainty based upon my	
12	experience and training in the field of	
13	commercial real estate appraisers and my	
14	expertise as an MAI designated appraiser.	
15	Do you see that?	
16	A. I do.	
17	Q. What do you mean by reasonable	
18	degree of certainty?	
19	A. It means that I'm confident in	
20	the conclusions within my expert report.	
21	Q. Is it possible that somebody	
22	could look at the same situation, come to a	
23	different conclusion and still have a	
24	reasonable degree of certainty?	
25	MR. WALSH: Objection to the	



Page 39 1 Aaron 2 form. 3 Α. That's always possible. 4 Ο. Are there any standards by which 5 you evaluate what a reasonable degree of certainty is? 7 MR. WALSH: Objection to the 8 form. 9 Α. I'm not sure I understand that 10 question. 11 Well, I'm trying to decide or 12 I'm trying to understand how you determine 13 whether your belief is to a reasonable 14 degree of certainty and whether it's not to 15 a reasonable degree of certainty. 16 When I have competency in the 17 property type I'm appraising, and that means 18 both in experience appraising similar properties a certain number of times and 19 20 also geographic competency, I reach a 21 reasonable degree of certainty. 22 certainly are assignments that I've been 23 involved with that it has taken me quite a 24 bit longer and more work to reach that 25 reasonable degree of certainty. So it



Page 40 1 Aaron 2 really does depend on the appraiser's past experience and, like I said, competency with a geography and a property type. And with, 5 I might add, with, you know, with other instances of similar appraisal problems. 7 What was the appraisal problem 8 that Mr. Tener was asked to approach in his 9 report? 10 MR. WALSH: Objection to the 11 form. 12 Α. I actually --13 Q. Do you know? I need to be clear that an 14 Α. 15 appraisal problem, you may be asked to do 16 one thing and discover that the 17 circumstances require you to solve a 18 different appraisal problem, so I can't say 19 specifically what he was asked to do, 20 although it seems from my review of his 21 documents and his work file that his scope 22 of work began with one appraisal problem and 23 evolved to include an entirely different 24 appraisal problem. 25 Q. And why do you say that?



Page 41 1 Aaron 2 Well, one version of his report 3 showed a fee simple value of land and the 4 second version or the final version showed 5 both a fee simple valuation of land which was unchanged from the first and something 7 that purported to be the value of the land 8 as encumbered. The appraisal problem in 9 this report was extremely muddled and it was 10 really not appropriate to confuse these two 11 scenarios. The scope of work required to 12 appraise the land as encumbered and per the 13 instructions of the lease is an entirely 14 different scope of work than the scope of 15 work to appraise vacant land unencumbered in 16 perpetuity -- owned in perpetuity. 17 sure that the proper scope of work -- I am 18 sure that the proper scope of work for the 19 second appraisal problem, the value of the 20 land as encumbered by the lease, was not 21 appropriately undertaken in this case. 22 Well, am I correct that, generally speaking, when an appraiser gets 23 an assignment, the first thing they need to 24 25 do is look at the terms of the lease?



Page 42 1 Aaron 2 I'm sorry, the terms of the document that 3 creates the assignment. 4 MR. WALSH: Objection to the 5 form. MR. KOH: Let me rephrase that 7 and let's do it this way. I'll 8 withdraw the question. 9 Okay. I've just brought up a Q. 10 document which was previously marked as 11 Plaintiff's Exhibit 16. My first question 12 Are you familiar with this document? 13 Α. Yes. 14 And what do you recognize it to 15 be? 16 Α. This looks to be the Option Rent 17 Addendum in the subject property lease. 18 This is the document that defines what the appraisers involved in this 19 20 project were supposed to do; correct? 21 Α. Yes. 22 And it contemplates the 23 appointment of two party appraisers; is that right? 24 MR. WALSH: Objection to the 25



Page 43 1 Aaron 2 form. 3 Α. I believe so; yes. Ο. Okay. 5 And on the first page of the 6 document, it says if the two appraisals 7 differ by more than 15%, then the two 8 appraisers shall appoint a third appraiser 9 chosen from a list of three appraisers 10 designated by the National Headquarters of 11 the American Institute of Real Estate Board 12 Appraisers, or if that is no longer in 13 existence, a similar or successor 14 organization. 15 Do you see that? 16 I'm actually looking for that 17 specific -- which paragraph are you looking 18 at? 19 That's in the final paragraph on 0. 20 the page and it begins the second sentence. 21 Α. I do see that. 22 So is it fair to say, Ms. Aaron, 23 that what the option rent term contemplates 24 for setting the fair market value is that if 25 the two appraisers differ by more than 15%,



Page 44 1 Aaron they appoint a third neutral appraiser? 3 It does say this; yes. Ο. Okay. 5 And, in fact, you've served in -- as the neutral appraiser in similar 7 situations; is that right? 8 Α. I have. 9 Let's move to the second page 10 I'd like to move to the second 11 paragraph. The second paragraph under that 12 page says the rental value shall be 13 established based upon the definition of 14 fair market rental value as the price which 15 an average well-informed tenant would pay 16 and an average well-informed landlord would 17 accept exclusive of tenant's improvements 18 knowing all of the uses to which the 19 property can be put without duress on either 20 party. 21 Do you understand that? 22 Α. Yes. 23 What does that language mean to Q. 24 you in terms of how the property should be 25 valued?



Page 45 1 Aaron 2 The lease is asking for a fair market rental value, simply the rent that a 3 4 tenant would pay for the property, an 5 average tenant, not a specific tenant, and that an average or typical landlord would 7 accept. 8 Have you ever heard the term 9 highest and best use? 10 Yes, I have. Α. 11 Does this language essentially 12 mean that you should set the rent at the 13 highest and best use? 14 Α. The rent at the highest and best 15 use given other limitations of the appraisal 16 problem and the language in the lease, 17 absolutely. The highest and best use 18 determination is constrained by other 19 language in the lease and the encumbrance of 20 the lease itself in this case. 21 If two appraisers had differing 22 views as the highest and best use, what 23 would be the likely impact on their two valuations? 24 25 Α. It could result in very



Page 46 1 Aaron 2 different value conclusions. 3 Q. So is it fair to say that the 4 determination of the highest and best use is 5 an important factor in leading to how an appraiser would value the property? 7 Α. Absolutely. 8 Have you ever been involved in 0. 9 any appraisal process or litigation where 10 different appraisers determined a single 11 piece of property had a different highest 12 and best use? 13 I have been involved in Α. 14 appraisal processes where some of the 15 appraisers have not analyzed highest and 16 best use properly or consistently, so yes. 17 So there have been times in 18 appraisal processes where the appraisers 19 have disagreed on the highest and best use; 20 is that fair to say? 21 MR. WALSH: Objection to the 22 form. 23 Appraisers have disagreed or Α. 24 applied highest and best use in incorrect 25 ways.



Page 47 1 Aaron 2 Well, you said incorrect. Q. 3 possible that two appraisers could have a 4 differing view of highest and best use? 5 Well, you said that; right? Α. Sure. 7 MR. WALSH: Objection to the 8 form. MR. KOH: Let me withdraw the 10 question. 11 If two appraisers disagree as to a property's highest and best use, how is 12 13 that difference resolved? 14 MR. WALSH: Objection to the form and to the extent it calls for a 15 16 legal conclusion. 17 Have you -- let me withdraw the Q. 18 question and rephrase. 19 Have you -- you say you have 20 been involved in appraisal processes where 21 the two appraisers disagreed on the highest 22 and best use; is that right? 23 I can't say that the appraisers 24 have come up with an entirely different 25 conclusion about the highest and best use,



Page 48 1 Aaron 2 but the application of highest and best use and the choice of comparables has been inconsistent in some of the appraisals that 5 I've seen. Q. Okay. 7 And where there were these 8 inconsistencies, what happened in those 9 cases to determine which appraiser's 10 appraisal would be followed? 11 MR. WALSH: Objection to the 12 form. 13 0. What happened in -- let me 14 rephrase the question. 15 In the cases where the two 16 appraisers had come up with inconsistent 17 applications of the highest and best use, 18 what happened after that? 19 After that, the appraisers 20 involved have written review appraisals of 21 the -- of their peers' analyses and pointed 22 out the flaws, and the -- either the judge 23 or the neutral appraiser has made a determination of which one is correct. 24 25 Q. And how is it determined whether



Page 49 1 Aaron 2 that person who made the determination as to 3 which one was correct was the judge or the 4 neutral? 5 MR. WALSH: Objection to the form. 7 Depending on the context of the Α. 8 type of proceeding. 9 So is it fair to say where you Q. 10 have two appraisers who differ on the 11 highest and best use and there's a neutral involved, is it the neutral's job to 12 13 determine which appraiser had the correct 14 highest and best use? 15 MR. WALSH: Objection to the 16 form. 17 Α. 18 Is there any reason in this case why the neutral could not determine whether 19 20 Ms. Locatell's appraisal or Mr. Tener's 21 appraisal was more correct? MR. WALSH: Objection to the 22 23 form. 24 Α. If this case were to proceed to 25 the point where a neutral was involved, it



Page 50 1 Aaron 2 would be the neutral's responsibility to 3 make that determination. 4 Let's look at the next paragraph 5 on the Options Rent Addendum which we've marked as Plaintiff's 16. That first 7 sentence reads: The standard market data approach technique for valuing vacant land 8 9 shall be used by the appraisers. 10 What is the standard market data 11 approach technique for valuing vacant land? 12 MR. WALSH: Objection to the 13 form. 14 Α. That's not a common appraisal 15 term, standard market data approach 16 technique. I understand that to simply mean 17 that market research of data needs to be 18 performed involving vacant land, you know, 19 yeah, involving vacant land, transactions 20 involving vacant land. 21 Ο. If that's not a standard term --22 hold on. I want to make sure I understand 23 what you said. 24 If that's not a standard or a 25 common term, would it be the job of the



Page 51 1 Aaron 2 appraiser to interpret what that language 3 means? MR. WALSH: Objection to the 5 form, to the extent it calls for a legal conclusion. It's the job of the appraiser to 7 8 interpret it within the rest of the language 9 in this paragraph and in the lease. 10 We'll come to the rest of the 11 language in this paragraph and the lease, 12 but is it possible that two different 13 appraisers looking at this language could 14 decide it means two different things? 15 MR. WALSH: Objection to the 16 form. 17 I can't answer that question. 18 I'm not -- I'm not sure. 19 Okay. Well, let's look at the 20 next sentence, which says: All comparable 21 leases shall be appropriately adjusted and 22 the written report shall indicate the 23 reasons for the adjustment so made. 24 What is a comparable lease? 25 It seems to be a lease for the Α.



Page 52 1 Aaron land in this process. 3 MR. WALSH: Howard, if we could take a break at 11:15, that would be 5 appreciated? We're five minutes away. MR. KOH: Okay. We can do that. 7 But the first sentence refers to the standard market data approach for 8 valuing vacant land. 10 Α. Yeah. 11 And the second sentence says all 12 comparable leases. 13 So how do you reconcile the first sentence discussing land and the 14 15 second discussing leases? 16 MR. WALSH: Objection to the 17 form. 18 That the lease -- that this 19 lease is instructing the appraiser to 20 analyze leases of land. 21 Isn't this lease instructing the 22 appraiser to value the vacant land and then 23 address for comparable leases? 24 Α. That's not my reading of this 25 language.



Page 53 1 Aaron 2 But it's possible that somebody 0. 3 else reading this language could read it the 4 way I said; isn't that true? 5 MR. WALSH: Objection to the form. 7 I can't say. That's not how I'm Α. 8 reading this language. 9 Do you believe that if Mr. Tener Q. 10 read this language and first valued the 11 land, that would have been an inappropriate 12 appraisal step? 13 MR. WALSH: Objection to the 14 form. 15 I really don't understand the Α. 16 question. 17 All right. Let's take the break 18 that Mr. Walsh asked and we'll come back and 19 pick this up shortly. 20 MR. KOH: How long do you want, 21 Mr. Walsh? 22 MR. WALSH: You know, maybe --23 why don't we come back at 11:20. 24 MR. KOH: Okay. Very good. 25 MR. WALSH: Thank you. And if



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		Page 54
1	Aaron	
2	Magna could put me in a breakout room	
3	with I guess everybody except the court	
4	reporter and Mr. Koh.	
5	MR. KOH: And Mr. Hedden.	
6	MR. WALSH: Yes. And Mr.	
7	Hedden. Good point.	
8	MAGNA TECH: So one moment. I	
9	will create a breakout room. I am	
10	creating it now, and then in the room	
11	it will be can you just read off	
12	that list for me? I'm sorry.	
13	MR. KOH: Why don't we go off	
14	the record.	
15	MR. WALSH: Sure.	
16	(Whereupon, a brief recess was	
17	taken.)	
18	CONTINUED BY MR. KOH:	
19	Q. All right, so, Ms. Aaron, I'd	
20	like you to turn to page 5 of your report,	
21	take a look at the first full paragraph.	
22	A. I am here.	
23	Q. You conclude that the Locatell	
24	appraisal follows the lease instructions	
25	with regard to methodology and reporting and	



Page 55 1 Aaron 2 it complies with USPAP with regard to the 3 completeness, adequacy, relevance and 4 appropriateness of the data presented and 5 the valuation techniques applied and the reasonableness of the value conclusions 7 drawn. 8 That's what you write about 9 Ms. Locatell? 10 Α. Yes. 11 And you do not make the same conclusion with respect to Mr. Tener; right? 12 13 Α. I do not. 14 In fact, on page 7, you write, 15 and I'm going to pick up in the middle of 16 the sentence in the second to last paragraph, 17 the Tener appraisal complies with neither 18 the lease nor USPAP and cannot be relied 19 upon as an indication of the -- I'm sorry --20 of fair market rental value pursuant to the 21 terms of the lease; right? 22 Α. Yes. 23 Okay. So I'd like to spend some 24 time exploring what your issues are with the Tener appraisal, and I think one of the 25



Page 56 1 Aaron 2 first things you pick up and discuss is the -some of the background concerning the case 4 law; right? 5 Α. Yes. And you discuss that on page 4. 7 Do you see that? Α. 8 Yes. 9 And on page 4, you write: Q. Ιn 10 lease rent proceedings performed in New York 11 State, appraisers are bound by legal 12 precedent as outlined in cases such as New 13 York Overnight Partners v. Gordon, and 14 that's defined as Overnight, and 936 Second 15 Avenue, LP v. Second Corporate Development 16 Inc. Second Avenue; right? And then you go 17 on. 18 That's correct. Α. 19 0. And you're not an attorney, are 20 you? 21 Α. No. 22 How did you come to understand what the cases New York Overnight Partners 23 24 and 936 Second Avenue require of appraisers? 25 There's a textbook for Α.



Page 57 1 Aaron 2 appraisers who participate in arbitrations 3 by Paula Konikoff. 4 That's captioned or -- I'm 5 sorry -- titled Appraisers in Arbitration, it's written by Paula Konikoff with Peter 7 Christensen and, in fact, in your report, you refer to the text on pages 39 to 41; 8 9 right? 10 I do refer to that textbook; yes. 11 0. Okay. 12 Is your understanding of what 13 those cases provided -- provide solely from 14 that textbook? 15 Also reading -- reading the 16 language from the cases themselves, the 17 direct language. 18 Have you discussed these cases 19 with any attorneys? 20 This is -- these cases are in Α. 21 issue in this litigation. 22 Specifically the New York 23 Overnight Partners and 936 Second Avenue, 24 have you ever discussed those two cases with 25 any attorneys?



Page 58 1 Aaron 2 With the attorneys with respect Α. to this case I'm saying. So Mr. Walsh? Ο. 5 Α. Yes. Q. Okay. 7 And did what you discussed with 8 Mr. Walsh go into or influence in any way 9 the preparation of your report? 10 Α. Absolutely not. 11 Q. Okay. 12 Is it possible that a differing 13 attorney could come up with a differing 14 interpretation of what these cases require 15 than Ms. Konikoff? 16 MR. WALSH: Objection to the 17 form. 18 I can't speak to attorneys 19 and their interpretation of anything. 20 Ms. Konikoff is also an appraiser. So would it have been important 21 22 for an appraiser preparing a report for this 23 project, 840 Atlantic Avenue, to discuss 24 936 Second Avenue and New York Overnight 25 Partners with an attorney before preparing



Page 59 1 Aaron 2 the report? 3 MR. WALSH: Objection to the form. 5 Α. It's absolutely important for an 6 appraiser to know that case law precedent 7 before preparing a report because it 8 directly dictates the methodology and 9 appraisal problem undertaken. So I don't 10 know whether an appraiser would necessarily 11 need legal advice if an appraiser is already 12 familiar with their opinions and their 13 impact on the valuation process. 14 Q. So to continue with what you 15 wrote in paragraph -- on page 4, you write, 16 after you identified the cases, which 17 clearly state that unless the lease says 18 otherwise, appraisers, and then you quote, 19 must take into consideration all 20 restrictions including current zoning 21 regulations and encumbrances on the land as 22 well as the lease term. 23 Do you see that? 24 Α. I do. 25 What happens if the lease says 0.



Page 60 1 Aaron 2 otherwise? If the lease says otherwise, 3 Α. then you follow the instructions in the 5 lease. So isn't having a good 7 understanding of exactly what the lease 8 provides important to determine whether 9 Overnight Partners and 936 Second Avenue 10 apply? 11 MR. WALSH: Objection to the 12 form. 13 Can you reask the question, Α. restate the question? 14 15 Sure. Q. 16 We've established that you only 17 apply the holdings in Overnight Partners and 18 936 Second Avenue unless the lease states 19 otherwise; correct? 20 Α. Correct. So isn't a review of the lease 21 22 important to determine whether the lease in 23 fact states otherwise? 24 Α. Absolutely. 25 And as between an appraiser and Q.



Page 61 1 Aaron 2 a lawyer, who is in the best position to determine what the lease states? 3 MR. WALSH: Objection to the 5 form. I can't answer that question. 7 Okay. Let's go to page 14 of your report, which is captioned Tener 8 9 Appraisal. 10 I'm there. Α. 11 It says right under there, the 12 Tener appraisal disregards the instructions 13 in the lease's Option Rent Addendum to 14 adjust comparable leases of vacant land as the valuation method without discussion or 15 16 reason for the exclusion of such leases and 17 when such leases are available in the market 18 area as demonstrated by both the Locatell report and the independent research 19 20 typically performed by appraisers in 21 assignments of this type. 22 Is that what you wrote? 23 It is. Α. 24 Q. Okay. 25 So you believe that there were



Page 62 1 Aaron 2 comparable leases that should have been adjusted for in preparing this report; 4 correct? 5 Α. Correct. Ο. Okay. 7 Is it possible that Mr. Tener 8 did not believe there were any comparable leases? 9 10 MR. WALSH: Objection to the 11 form. 12 He testified he did not believe 13 there were comparable leases. 14 Q. Do you believe that Mr. Tener 15 really did think there were comparable 16 leases, but testified that he didn't? 17 MR. WALSH: Objection to the 18 form. 19 I can't say what Mr. Tener 20 thought other than what he stated. 21 If the appraiser believed there 22 were not comparable leases, what should the 23 appraiser have done? 24 Α. The appraiser's belief that 25 there were not comparable leases needs to be



Page 63 1 Aaron 2 backed up by a thorough search for 3 comparable leases, so that's part of the 4 process, is the research -- you know, 5 adequate research, a thorough survey of the market of all data available, whether it be 7 on public databases, calling other 8 appraisers, really scouring the market for 9 data. I don't know whether Tom Tener did 10 this, I saw no evidence of it in his work 11 So, you know, that's step number 1. 12 You have to do the appropriate scope of work 13 to make that determination. Then if there truly were no comparable leases, and I'm not 14 15 saying that's the case there because Sharon 16 Locatell's report has 11 or 12 comparable 17 leases that could have been analyzed, then a 18 land residual technique is permitted to be 19 undertaken. 20 You say there are comparable Q. 21 leases and that's demonstrated by the fact 22 to begin with that the Locatell report found 23 11 or 12 comparable leases; correct? 24 Α. Yes. The Locatell report 25 includes comparable leases which were



Page 64 1 Aaron 2 adjusted. Q. And you in fact believe that at least nine of them were comparable? 5 Α. I -- yes, I confirmed that nine of them appear to be comparable leases; yes. 7 And you say another way to 8 determine whether there is comparable 9 research check check is independent research typically performed by appraisers. Describe 10 11 that research for me. 12 Appraisers -- appraisers can 13 search subscription databases for comparable 14 data, appraisers can certainly look in their 15 own work files and the work files of other 16 appraisers in their firm, appraisers 17 typically e-mail and phone many other 18 appraisers, when data is hard to come by, they can ask clients that they've had in the 19 20 past or currently for market data, 21 especially if you have appraised a certain 22 property type and you know brokers and owners of these property types, sometimes 23 24 that's the best way to get comparable data. 25 Q. Did you conduct any of this



Page 65 1 Aaron independent research? 3 I searched CoStar database. What's the CoStar database? 5 Α. CoStar is a national subscription database with general real 7 estate data and comparable lease and sale 8 data. And what did you find when you Q. searched the CoStar database? 10 11 I wasn't specifically searching 12 for comparable land leases in this matter. 13 Well, what did you search the 0. CoStar database for? 14 15 I was searching in relation to Α. 16 my examination of the comparables used in 17 Tener's land residual analysis, so I was 18 searching for leases of already improved 19 retail, which is one of the inputs in the 20 land residual analysis. 21 So you didn't do the search to 22 determine if there were other comparable 23 sites like Ms. Locatell did; right? 24 Α. I didn't do an independent 25 search of additional comparable land sales.



Page 66 1 Aaron 2 Q. Okay. 3 And when Ms. Locatell did her search of --4 5 Α. Land rentals, if I might correct 6 myself. 7 That's what I thought. Of land 8 rentals. Did she make an assumption of what 9 the property's highest and best use was? 10 MR. WALSH: Objection to the 11 form. 12 I don't -- I don't know about 13 your use of the word assumption. 14 appraisal report analyzes quick service 15 retail as the leases of land developed for 16 quick service retail, so that's the implicit 17 highest and best use conclusion of her 18 report. 19 So just so that I'm sure that I 20 understand, you believe that Ms. Locatell 21 implicitly concluded that quick service 22 retail was the highest and best use for the 23 site at 840 Atlantic Avenue? 24 Α. Subject to the encumbrance of 25 the lease, yes.



Page 67 1 Aaron 2 Did Mr. Tener share that 0. conclusion from what you can tell in 3 4 reviewing his report? 5 No. I see no evidence that Mr. Tener concluded that quick service 7 retail was highest and best use. 8 In fact, he thought that the 9 highest and best use was a development site; 10 correct? 11 A development --12 MR. WALSH: Objection to the 13 form. 14 Yeah, development site's a very 15 general term. Well, to the extent that 16 17 Ms. Locatell and Mr. Tener had a difference 18 of opinion as to the property's highest and 19 best use, is there any reason a neutral 20 appraiser couldn't resolve that difference? 21 MR. WALSH: Objection to the 22 form. 23 If this matter were permitted to 24 be put forward with a neutral -- to move 25 forward with a neutral process, a neutral



Page 68 1 Aaron 2 would be required to determine who's right 3 and who's wrong. Q. Okay. 5 So as you sit here today, it's your testimony that if this matter moves 7 forward and a neutral reviews the appraisals 8 of both Mr. Tener and Ms. Locatell, a 9 competent neutral would be able to determine 10 which of those two had the correct highest 11 and best use? 12 MR. WALSH: Objection to the 13 form and to the extent it calls for a 14 legal conclusion. 15 MR. KOH: I'll rephrase. 16 Can any neutral determine what Q. 17 the highest and best use is for the property 18 subject to the restrictions of the lease and the law for the property at 840 Atlantic 19 20 Avenue? 21 Α. Can you repeat the question? 22 Q. Yes. 23 Would a competent neutral be 24 able to determine the highest and best use 25 for the property at 840 Atlantic Avenue



Page 69 1 Aaron 2 subject to the lease and the law? 3 A competent neutral appraiser 4 would absolutely conclude that the Locatell 5 report complies with the language of the lease and determines highest and best use 7 under the language of the lease, and the 8 Tener report does not. Q. Okay. 10 So in plain English, if a 11 neutral were involved here, that neutral 12 would see that Ms. Locatell should win; 13 right? 14 MR. WALSH: Objection to the 15 form. 16 Α. Yeah, I'm --17 Q. Okay. Let me rephrase. 18 You believe that if the process 19 described in the lease were to go forward, a 20 neutral would determine that Ms. Locatell's 21 report more properly captures the fair 22 market rental value of the property at 23 840 Atlantic Avenue? 24 MR. WALSH: Objection to the 25 form.



		Page 70
1	Aaron	
2	Q. You can answer that.	
3	A. Absolutely.	
4	Q. Okay.	
5	And is that primarily because	
6	you believe that Mr. Tener implicitly used	
7	the incorrect highest and best use?	
8	MR. WALSH: Objection to the	
9	form.	
10	A. Yes. Mr. Tener didn't do the	
11	work didn't appear to do the work to	
12	get to the proper highest and best use.	
13	Mr. Tener, his appraisal report started out	
14	with the wrong appraisal problem, the fee	
15	simple value of the property in perpetuity,	
16	so the highest and best use in that case is	
17	entirely different from what what the	
18	highest and best use would be as encumbered	
19	up to a 20-year lease term because of	
20	financial feasibility. Development sites in	
21	perpetuity have a totally different highest	
22	and best use than development sites for a	
23	20-year term. Then the Tener report	
24	purportedly added an analysis of the land	
25	residual that accounts for the encumbrance	



Page 71 1 Aaron 2 However, that analysis was so of the lease. 3 unsupported and every input was unsupported. I don't know where his conclusion of the 5 highest and best use of some kind of 20,000 square foot retail development came from 7 because it wasn't supported by any market 8 data, and I didn't see any evidence of any 9 research of market data in his report in 10 support of the hypothetical improvement for 11 this highest and best use conclusion. 12 yes, I think highest and best use is a real 13 problem in the Tener report. 14 And you believe that any Q. competent neutral would come to the same 15 16 conclusion? 17 Α. Absolutely. 18 Q. Bear with me one moment, please. 19 I could add on to my answer if 20 appropriate. 21 Q. Go ahead. 22 Highest and best use in the 23 Tener report is a glaring problem because 24 Tener somehow tries to say that the land 25 residual which was done based on this



Page 72 1 Aaron 2 hypothetical highest and best use as a 3 20,000 square foot retail development is 4 somehow supportive of the value of the site 5 in perpetuity, and in fact comes to a higher residual value under this highest and best 7 use of the site as encumbered for 20 years 8 than in perpetuity. So this is a huge red 9 flag in the appraisal because a site as encumbered for 20 years would never be --10 11 the land would never be worth more than the 12 site in perpetuity, and if in fact an 13 interim highest and best use for 20 years 14 were worth more than the highest and best 15 use in perpetuity, that would be, by 16 definition, the highest and best use, and 17 the comparable sites in the market would not 18 be purchased for mixed use development, they 19 would be being purchased for development of 20 20,000 low Class D retail developments. 21 And is that something that any 22 competent neutral reviewing Mr. Tener's 23 report would be able to see? 24 Α. Absolutely. 25 It looks like I had MR. WALSH:



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			Page '	73
1		Aaron		
2	myself o	on mute. I attempted to object		
3	to the f	form of that question.		
4	4	MR. KOH: Why am I not		
5	surprise	ed?		
6	Q. S	So one of the faults you have		
7	with the Tene	er appraisal is that he doesn't		
8	identify any	comparables and adjust for		
9	them; correct	: ?		
10	Α. (Correct.		
11	Q. A	And Ms. Locatell does that;		
12	correct?			
13	Α. Σ	Yes. To be specific, comparable		
14	leases.			
15	Q. F	Right.		
16	I	And Ms. Locatell as comparable		
17	leases used o	quick service restaurant leases?		
18	Α. 7	That's correct.		
19	Q.	Is that what some of those were?		
20	Α. 7	That's correct. For the most		
21	part, restaur	rants, I believe.		
22	Q. A	And others were banks, for		
23	example?			
24	Α. Σ	Yes.		
25	Q. F	Have you heard the term pad		



Page 74 1 Aaron 2 site? 3 Α. I've heard that term; yes. Ο. What does it mean to you? 5 Α. It means land that is 6 developed -- to be developed typically --7 typically for quick service retail or bank 8 uses with -- they typically have high land 9 to building ratios, so larger sites, smaller 10 buildings, and often they are -- often 11 they're adjacent to shopping centers, but 12 not -- certainly not in urban areas like 13 Brooklyn. 14 Q. So is it fair to say that 15 implicit in Ms. Locatell's report is that 16 the highest and best use for the property at 17 840 Atlantic Avenue was a pad site? 18 As encumbered by the lease for Α. 19 up to a 20-year term, that is the implicit 20 conclusion; yes. 21 0. And Mr. Tener did not share that 22 conclusion; correct? 23 Α. No. 24 Is there also a comparable --25 I'm sorry.



Page 75 1 Aaron 2 Is there any reason a comparable 3 neutral could not make the determination as to whether Ms. Locatell or Mr. Tener was 4 5 correct about the highest and best use? MR. WALSH: Objection to the 7 form. 8 Part of the neutral's job is to Α. 9 determine who is correct and who is not correct, if it were permitted to, you know, 10 11 if it were permitted to go there. 12 So once Mr. Tener came to the 13 conclusion that the highest and best use were not as a pad site, but as a development 14 15 site, did he have a duty to search for 16 comparables? 17 Well, searching for comparables 18 needs to be part of the -- of forming that 19 conclusion. Prior to forming that 20 conclusion of highest and best use, there 21 has to be market evidence of leases or sales 22 for that use. So the comparable search 23 isn't after you determine -- necessarily in 24 the order that you're saying, the appraiser 25 comes up with the highest and best use and



Page 76 1 Aaron 2 then searches for support. It's the other 3 way around. The appraiser performs a market 4 analysis, sees what the market is doing, 5 sees what the active -- the leasing activity is active for and sales activity over, you 7 know, certainly for development over a 8 20-year term, and then comes to the 9 highest -- sees all the different uses that 10 the market is exhibiting demand for and then 11 draws a conclusion. So I'm not sure that 12 Mr. Tener did things in that order, but 13 that's the order that appraisers need to 14 perform their work. 15 Are you relying on any specific 16 USPAP or other professional standard for 17 your conclusion that the determination of 18 highest and best use must follow a market 19 survey? 20 Absolutely. The basic Α. Yes. 21 appraisal textbook, the Appraisal of Real 22 Estate, describes a six-step process, and --23 and market analysis comes before highest and 24 best use conclusions, and then -- then at



that point, the appraisal methodology is

25

Page 77 1 Aaron 2 determined. It's called, you know, they 3 have a -- literally in the textbook there's 4 a chart of the order of the steps that we 5 perform the appraisal process. So only after you do your market analysis and 7 conclude to the highest and best use can you 8 then determine the appropriate approaches to 9 apply in your appraisal. 10 What market analysis did 11 Ms. Locatell perform in order to determine 12 that a pad site was the highest and best use? 13 Well, I certainly can't say Α. 14 comprehensively what Ms. Locatell did or 15 didn't do. However, I am aware that in her 16 work file there were CoStar search results, 17 there were e-mails to other appraisers 18 asking for data. 19 0. Isn't it true that Ms. Locatell 20 first determined that this was to be 21 evaluated as a pad site and then went out and looked for the comps? 22 23 MR. WALSH: Objection to the 24 form. 25 Α. Well, I can't say what order



Page 78 Aaron 1 2 Ms. Locatell did things in because that was 3 not obvious to anybody from the outside. 4 can say that a competent appraiser in a 5 given market area can certainly have enough experience with other properties to know 7 what the market activity is and what things 8 are being sold for and rented for and can 9 certainly rule out certain uses based on 10 lack of demand or lack of any evidence of 11 market activity in their appraisal practice. 12 So there is a certain amount of experience 13 that competent appraisers in a geography 14 bring to the analysis. So I'm not trying to 15 say that every appraiser's work file needs 16 to have like evidence of every step 17 performed in the proper order. We all have 18 different levels of experience with 19 different property types and geographies in 20 our appraisal practice that we bring to an 21 assignment coming in. 22 Have you made a determination 23 as to the highest and best use of the 24 property at 840 Atlantic Avenue as 25 restricted by the lease and the law?



Page 79 1 Aaron 2 I have not made an independent Α. 3 I have concluded that the determination. 4 conclusions in the Locatell report are well 5 supported and reasonable and comply with the lease and that the conclusions of highest 7 and best use in the Tener report are 8 unsupported and not reasonable and don't 9 conform to the language of the lease. 10 And what is your basis for 11 concluding that Mr. Tener's -- I'm sorry. 12 Let me rephrase that a second. 13 Why do you believe that 14 Mr. Tener's conclusions on highest and best 15 use are unsupported and not reasonable and 16 don't conform to the language of the lease? 17 Well, Mr. Tener has conflicting 18 conclusions about highest and best use in 19 his report, first. The whole bulk of the 20 report is based on fee simple land analysis, 21 and so his stated highest and best use 22 conclusion in the report is mixed use 23 development, which is only appropriate to 24 sites owned in perpetuity. So that 25 conclusion is noncompliant with the lease --



Page 80 1 Aaron 2 the encumbrance of the lease. And then he 3 has this tacked on land residual approach 4 which is not based on development -- the 5 stated highest and best use of development of a mixed use property in perpetuity where 7 there is no stated highest and best use, but 8 the hypothetical improvements that Tener 9 includes are a 20,000 square foot retail 10 property, and I have concluded that that use 11 is absolutely not financially feasible. 12 I've concluded this by testing every input 13 in his land residual approach against market 14 data and finding each assumption to be 15 unsupported and to have the compound effect 16 of inflating value, and I've also performed 17 independent research showing that there's no 18 market demand for these hypothetical 19 improvements. So that's -- that's the basis 20 for my conclusion that his highest and best 21 use is --22 Well, what independent research 23 have you performed to reach the conclusion 24 that there was no market demand for these



hypothetical improvements?

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Page 81 1 Aaron 2 I have seen -- I -- let me 3 rephrase that. In my -- in my experience as 4 a Brooklyn appraiser and someone who does 5 more than 45% of the appraisals in my office are based in Brooklyn, New York, we do land 7 and development appraisals all the time, and 8 I have never seen land in this kind of area 9 of Brooklyn sold -- in recent -- in around this time, 2018, I see no evidence of sales 10 11 for this kind of development, or leases. 12 And then the independent market research 13 that I did was to test, you know, the 14 assumptions about rent for these hypothetical 15 improvements which I found the likely rent 16 for improvements of this size and in this 17 location, there's market evidence that the 18 achievable rent would be much, much lower, 19 perhaps half, and I did market research 20 about the costs, about the construction 21 costs, and I have experience with proposed 22 construction in New York City and have never 23 seen costs anywhere near as low as though 24 and I have never seen Class D construction 25 of retail in Brooklyn, New York. You know,



Page 82 1 Aaron 2 it's all here in my report the things that I tested and the things that I didn't test in 4 terms of the research that I did. 5 Q. Didn't Mr. Tener's residual land analysis contemplate an owner user purchasing 7 the site to develop a commercial use from 8 which its own product could be sold? 9 MR. WALSH: Objection to the 10 form. 11 I do know that Tener testified 12 as to this. There's certainly no -- nothing 13 in the report to indicate that this 14 hypothetical improvement would be for an 15 owner user, but once again, I have seen no 16 owner users developing property -- retail 17 property of this size anywhere in New York 18 in my career. Ever. I mean, it's just not 19 something that owner users are doing in the 20 market, and that -- that's really a key 21 point here, is that highest and best use 22 conclusions, you know, they can be 23 quantitative or they can be qualitative, but 24 either way, they need to be supported by 25 market activity which demonstrates demand.



Page 83 1 Aaron 2 There is an owner user market for retail 3 land, and that is the quick service retail 4 market. So for sites of this size, the only 5 owner users that are actively leasing and developing land that I am aware of are 7 restaurants and banks. 8 What about retail stores? 0. 9 you aware of any of those? 10 Owners developing retail land --Α. 11 0. Yes. 12 Α. -- with their own buildings? 13 Q. Yes. Not specifically. Maybe there's 14 Α. 15 a few here and there. I'm not aware of them 16 as being an active retail developer purchase 17 point. 18 Are you aware that Raymour & 19 Flanigan, the furniture retailer, purchased 20 a site in Brooklyn to develop its own retail 21 store, construct and develop its own retail 22 store? 23 MR. WALSH: Objection to the 24 form. 25 Α. I am not aware of the specific



Page 84 1 Aaron 2 property. 3 Q. If you became aware of that, 4 would that change your view in any way? 5 Α. Well, not necessarily. I mean, it really depends on the economics of that 7 site acquisition and at what cost, you 8 know -- in terms of would it change my 9 opinion that you could buy land -- that an 10 owner user would buy land for, you know, 700 11 something dollars a square foot and then 12 invest in the cost to develop a 20,000 13 square foot building, I'd love to see if 14 Raymour & Flanigan was spending that kind of 15 money on land. Let's continue to talk a little 16 17 bit about your concerns with Mr. Tener's 18 analysis. On page 15, you write: The rate 19 chosen -- and this is at the bottom of the 20 first paragraph -- the rate chosen is also 21 above the normal range of 4 to 6% that has 22 been fairly consistent in recent years and supported by my own survey of recent land 23 24 leases signed between 2016 and 2018. 25 What land survey are you



Page 85 1 Aaron 2 referring to? 3 Α. My work in appraisals that my 4 company has performed. I reviewed land 5 leases in our file. 0. Okay. 7 And you say the rate chosen. 8 What is -- I know it's 8%, but that was the 9 interest or -- I'm sorry. What did you mean by the rate chosen other than the amount? 10 11 Well, I'll first say that this 12 rate is in association with the fee simple 13 sales comparison approach, so it's wholly 14 irrelevant anyway to the appraisal problem. 15 Q. I understand that, but one of 16 your -- I know you believe that the sales 17 comparison approach was the wrong approach, 18 but you also criticized the sales comparison 19 approach for choosing the wrong rate or rate 20 of return, 8%. 21 Α. Right. 22 And I want to explore that a 23 little bit. Do you think 4 to 6% is more 24 typical? 25 Α. I would say that 4 to 6% is all



Page 86 1 Aaron that I've ever seen in my practice in terms of land rates, and we do appraise quite a few. And are these land rates located 4 Ο. 5 in a specific geography? Within the five boroughs of New 7 York. 8 Does that include Brooklyn? Α. It does. 10 Would a competent neutral be 11 able to determine that an 8% rate would be 12 less appropriate than a 4 to 6% return rate? 13 MR. WALSH: Objection to the 14 form. 15 If it were appropriate for 16 this -- to proceed to include a neutral, 17 and, again, I can't comment on the 18 litigation beyond these appraisal reports, a 19 neutral would make a -- would -- and if this 20 were determined by the neutral to have any 21 relevance to the appraisal problem, then the 22 neutral would need to decide whether that 23 rate is appropriate. You also criticize the data set 24 0. 25 that Mr. Tener uses to come up with his 8%



Page 87 1 Aaron You determined that some of the leases were too old. Is that correct? Absolutely. Α. 5 Q. Okay. How do you know what the -- when 7 a lease is too old and when it isn't too old? 8 Α. Again, it's the same thing I 9 keep coming back to in my testimony here. 10 An appraiser must do the appropriate 11 research to get the full landscape of data. 12 And so if it were appropriate to apply a 13 rate to sales of vacant land, part of the 14 scope of work is researching recent rates, 15 recent deals. There are deals being done in 16 New York that are long-term ground leases of 17 vacant land. What are those rates. 18 need to get the data. I don't know why 19 anyone would look at data that is 50 to 70 20 years old -- 20 to 70 years old when there 21 are deals being done, there are brokers that 22 specialize in these deals, and it takes work, it takes phone calls, e-mails, it 23 24 might take a lot of time, but in order to 25 support -- to support your rate; yeah.



Page 88 1 Aaron 2 So any analysis that used an 8% 0. rate of return would be inappropriate in 3 4 your view? 5 Α. That's not --MR. WALSH: Objection to the 7 form. Α. That's not what I said. 8 9 Okay. Well, I'm trying to Q. 10 figure it out. 11 If the Tener work file had 12 recent comparables of ground leases in the 13 outer boroughs of New York City for retail 14 use demonstrating that deals are being done at an 8% rate, then that's appropriate 15 16 I just didn't see any appropriate support. 17 support. And on top of that, the rate used 18 was way outside anything I have seen in my 19 practice. 20 And you also criticize Mr. Tener's 21 report for factoring potential rezoning of 22 the land into the rate selection; correct? 23 That's on page 15. 24 And where -- if you would remind 25 me where that is.



Page 89 1 Aaron 2 Page 15, bottom paragraph, by 0. 3 factoring in a potential rezoning of the 4 land into the rate selection, Tener has 5 violated the requirements established by legal precedent, the Overnight and Second 7 Avenue, to determine the value of the land 8 as if vacant and unimproved subject to 9 current zoning restrictions and contractual 10 limitations. 11 Right. So this gets back to the 12 fundamental appraisal problem here, which is 13 to value the property subject to the 14 encumbrance of the lease, so yes, Overnight 15 and Second Avenue do -- the language very 16 clearly says current zoning restrictions, 17 and so that would be the current zoning 18 district, but I would also say that if 19 you're looking at the encumbrance of the 20 lease, which is up to a 20-year term, a 21 potential rezoning is completely irrelevant 22 because no one could -- within a 20-year 23 period, you know, these rezonings take a 24 very long time, this M-Crown still isn't in 25 effect and it's been, you know, years since



Page 90 1 Aaron 2 2014 or something like that that they've 3 been talking about it and, you know, on day 1 of the lease to wait for a rezoning and then 5 to file plans and get in the ground, too much of that 20-year period would pass to be 7 able to recoup any kind of investment in 8 land, so it's not appropriate to factor any 9 rezoning into the appraisal encumbered -- of 10 land encumbered by a 20-year term for 11 multiple reasons. 12 Q. Okay. 13 So just to be sure I understand that, you essentially have two reasons why 14 15 in fact Mr. Tener -- it was inappropriate 16 for Mr. Tener to factor in the potential 17 rezoning, the first being that it doesn't 18 comply with the lease and the law; right? 19 Correct. 20 Q. Okay. 21 So is it your belief that a 22 well-informed landlord would not consider 23 the possibility of rezoning the property in 24 connection with setting the leasing rates 25 for this property?



Page 91 1 Aaron 2 MR. WALSH: Objection to the 3 form. 4 It's not just the landlord that Α. 5 determines a deal. Sure. 7 It could be a meeting of the 8 minds between a landlord and a tenant. 9 landlord may be very much aware of the 10 potential rezoning of the site, but a tenant 11 leasing land for 20 years couldn't care less 12 about the potential rezoning of the site, 13 so, you know, the tenant -- there's no 14 reason that a well-informed tenant would pay 15 a rate that's any different from any other 16 site that's not subject to a rezoning --17 0. So --18 Α. -- a potential rezoning. -- do I understand you correctly 19 0. 20 that even if the potential tenant knew of 21 the possibility of the rezoning, they 22 wouldn't pay attention to that because they 23 couldn't in your view recoup any build-out on the basis of that rezoning within the 24 25 20-year period?



Page 92 1 Aaron 2 Absolutely. Α. 3 MR. WALSH: Objection to the 4 form. 5 Q. So the real problem is the 20 years, not so much the fact that Mr. Tener 7 considered that in his report? 8 MR. WALSH: Objection to the 9 form. The language in the Second 10 Α. 11 Avenue case is very clear that the valuation 12 needs to be done with consideration of 13 current zoning restrictions. They are both 14 reasons not to consider the potential -- the 15 very -- you know, potential hypothetical 16 M-Crown rezoning. By the way, this is not 17 an official rezoning even on the City's 18 website yet. I mean, this is very 19 speculative. At the time of value, M-Crown 20 itself and any rezoning of the site was 21 highly speculative, the timing being very 22 uncertain. 23 Is it possible that the owner of 24 this property could have applied for a 25 zoning variance irrespective of whether



Page 93 1 Aaron 2 M-Crown passes or not? 3 Α. Absolutely. Any property owner 4 can apply for a zoning variance, or a 5 zoning -- actually a zoning variance; yes. Or a rezoning is I think what actually 7 happened in this case. 8 I'm sorry. You said a rezoning? For a rezoning, for a rezoning. 10 Right. You said that actually 11 happened in this case. What did you mean by 12 that? 13 Recently the site as we, most of 14 us are aware, rezoning of this site has been 15 approved or has passed the preliminary 16 approval towards a rezoning, which is 17 irrelevant, because this is all several 18 years past the date of value. 19 0. I'd like to look at page 17. 20 the second full paragraph, you write if the 21 Tener appraisal is correct that a site 22 developed for retail use over a 20-year 23 period produces the same or a higher value 24 than a site developed for mixed residential 25 and retail use in perpetuity, then by



Page 94 1 Aaron 2 definition the property's highest and best 3 use would be retail development for fee 4 simple ownership as well as for 20-year 5 leasehold property rights and not a mixed use development as stated earlier in the 7 Tener report. 8 What did you mean by definition? 9 Α. The definition of highest and best use is the use that produces the 10 11 highest residual land value, the highest 12 return to the land, so I think I tried to 13 explain this earlier. If the assumptions of 14 the land residual in Tener's report bore 15 out, which they don't, and land were worth 16 more -- equal to or more for this 20,000 17 square foot retail development than land for 18 mixed use residential development, that 19 would be the highest and best use for land 20 with similar zoning. It couldn't be -- if 21 the residual land value were more -- worth 22 more for this use, that would be the highest 23 and best use, and the -- and it would be 24 evidenced by market activity. The fee 25 simple land sales that you -- that Tener



Page 95 1 Aaron 2 used are sales that they -- if retail were 3 the highest and best use, those similar sales would be sold to retail instead of 5 what they have been sold for, which is mixed use development, wait for a rezoning, try to 7 get their own site rezoned, what this 8 market, you know, what the fee simple market is doing in this location. You wouldn't see 10 that. You would see a bunch of retail 11 buildings being constructed guickly at low 12 cost, and by owner users. I see it nowhere. 13 0. Have you ever heard the term interim use? 14 15 Of course. 16 And what does that term mean to 17 you? 18 An interim use is when a market 19 is changing, when there is a future highest 20 and best use, if you see the supply and 21 demand factors changing and you see a path 22 toward the fundamental economics changing 23 and you forecast based on data that, you 24 know, in three or five years there will be a 25 future highest and best use, but as of today



Page 96 1 Aaron it's not there yet, and as of today a certain use has a higher value, that would be an interim use. So yes, that's the 5 definition of interim use. Didn't Mr. Tener conclude that 7 while the highest and best use long-term for 8 this property was mixed use residential/retail 9 development, the best use for the 20-year 10 period and interim use was a commercial 11 development? 12 MR. WALSH: Objection to the 13 form. 14 Α. Well, once again, conclusions of 15 interim use need to be just as supported as 16 conclusions of highest and best use, of any 17 kind of highest and best use, so he may have 18 concluded that this was an interim use, it 19 certainly wasn't stated in his report, 20 but -- but, again, none of that is supported 21 by any market demand for this use type, in 22 fact there's evidence for lack of demand for 23 retail as of the date of value, for large 24 retail, so, you know, he can call it what he 25 wants, it just -- you know, everything needs



Page 97 1 Aaron to be backed by proper support, and it's not. 3 Q. Is there any reason that a 4 competent neutral reviewing Mr. Tener's 5 report would not be able to conclude that Mr. Tener did not have appropriate proper 7 support for his conclusion that commercial 8 was the best interim use? 9 MR. WALSH: Objection to the form and to this whole line of 10 11 questioning as to what a competent 12 neutral appraiser would do. 13 MR. KOH: Your objection is noted. I don't know what else to tell 14 15 you. 16 I'll just keep saying the same 17 answer, which is if this process were 18 permitted to, you know, proceed, and, again, 19 there might be reasons why it should or 20 should not go to a neutral, yes, I mean, a 21 neutral would have to make all these 22 determinations. 23 Your report discusses the 24 property at 470 Atlantic -- Vanderbilt 25 Avenue; correct?



		Page	98
1	Aaron		
2	A. Yes.		
3	Q. Can you describe that property		
4	for me?		
5	A. That property is located		
6	diagonally across Atlantic and Vanderbilt		
7	northwest from the subject property and it's		
8	an office and retail property multi-story.		
9	Q. Are there often tenants?		
10	A. Yes.		
11	Q. Do you know who they are?		
12	A. Well, I don't know all of them.		
13	I know there are a variety of tenants on the		
14	upper floor. I know it is the New York		
15	City Housing Authority is one of the major		
16	tenants of that building as well.		
17	Q. What's a major you said the		
18	term major tenant. What do you mean by		
19	major tenant?		
20	A. Taking a significant amount of		
21	space in the building.		
22	Q. Is the retail portion of		
23	470 Atlantic Avenue occupied currently?		
24	A. I don't know		
25	Q. Let me rephrase that question.		



Page 99 1 Aaron 2 At the time you rendered your 3 report, was the retail portion of 470 4 Atlantic Avenue occupied? 5 Α. I don't know if the space that I refer to in my report is a hundred percent 7 of the retail space. There may be one --8 there may be more. However, large retail 9 space was not occupied then and I don't 10 believe it's occupied now. 11 How much frontage on Atlantic 12 Avenue does that large retail space have? 13 None. And that was a very Α. 14 interesting data point to me. I believe 15 none in that, you know, when this building 16 was converted, this location of Atlantic 17 Avenue was not considered the more desirable retail frontage. They actually put the 18 19 Housing Authority space on Atlantic Avenue 20 and chose to put their retail on Vanderbilt, 21 which I think was considered perhaps a more 22 desirable retail location than Atlantic. 23 And you said the building was Q. 24 converted. When did the conversion occur? 25 Α. I don't know exactly, but at



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Page 100
 1
                         Aaron
     least ten years ago, perhaps longer.
 3
                 Bear with me for a moment.
          Q.
 4
                 All right. I was about to turn
 5
     to another area, but I think now might be a
     good time to take lunch. Would anybody
 7
     object to that? Should we come back at
 8
     1:00?
 9
                 MR. WALSH: Fine with me.
10
          Amanda?
11
                 THE WITNESS: Yes. Absolutely.
12
          Sounds good.
13
                 MR. WALSH: Okay.
14
                 MR. KOH: Okay. If you could
15
          put everybody in the same breakout
16
          rooms, Josh, that would be great, and
17
          we'll return at 1, everybody.
18
                 MR. WALSH: 1:00. Thanks.
19
                 MAGNA TECH: They should be
20
          open.
21
                 (Time noted: 12:24 p.m.)
22
                 (Lunch recess taken.)
23
                 (Time resumed: 1:02 p.m.)
     CONTINUED BY MR. KOH:
24
25
          Q.
                 Okay. I would like to pick up
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Page 101 1 Aaron 2 on an area that I didn't get to this 3 morning, but would like to get to now. I understand that you made an 5 inspection of the property at issue here? I did. 7 And you did that in October of 8 2018 -- I'm sorry -- 2021, October 28, 2021; 9 correct? 10 Α. If that's what it says in my 11 report, that's when I did it. 12 Q. Okay. 13 Well, describe what you did in 14 order to inspect the property. 15 Α. Sure. I walked to the property 16 from my home, which is about a mile south, 17 mile and a half south, so I walked down 18 north on Vanderbilt, I walked the property, 19 and then I walked to my office from the 20 property along Atlantic Avenue, and my 21 office is about three quarters of a mile to 22 the west at the intersection of Atlantic and 23 Flatbush, right off of there, and I took 24 photos and made special note of the 25 surrounding. That's what I did.



- 0			
			Page 102
	1	Aaron	
	2	Q. About how long did this pro	ocess
	3	take?	
	4	A. Well, in all the walking, i	it
	5	took quite some time.	
	6	Q. The actual inspection proce	ess.
	7	A. Maybe 15, 20 minutes on sit	ce.
	8	Q. Okay. I commend you for yo	our
	9	walking. It's very healthy.	
	10	A. Thank you.	
	11	Q. I've run in I run in Bro	ooklyn
	12	occasionally when I run along Atlantic	
	13	Avenue and 4th Avenue for the New York	
	14	Marathon.	
	15	A. Ah, yeah. Yes.	
	16	Q. I just had to get that out	so
	17	everyone understands that I did that.	
	18	MR. WALSH: I've done it, t	
	19	MR. KOH: I'm impressed.	
	20	A. Well, I can't say I've had	that
	21	particular Brooklyn experience.	
	22	Q. Granted.	
	23	MR. KOH: Well, let's compa	are
	24	times because we're in a competiti	ive
	25	business.	



		Page 103
1	Aaron	
2	Okay. Back to work.	
3	MR. WALSH: I'm sure it was	
4	better than mine.	
5	MR. KOH: No. I'm pretty slow.	
6	Q. Okay. Let's go back to your	
7	report for just a moment then. I want to	
8	direct your attention to page 21. And under	
9	Hypothetical Improvements, your second	
10	paragraph reads: As discussed above, proper	
11	highest and best use analysis begins with	
12	market data showing significant demand for	
13	given hypothetical use, but I'm aware of no	
14	market evidence of demand for sites to	
15	develop 21,500 square feet of retail around	
16	the date of value, and Tener's report and	
17	work file provide no support for the	
18	conclusion.	
19	What about smaller sizes? Are	
20	you aware of market data showing sufficient	
21	demand for that?	
22	MR. WALSH: Objection to the	
23	form.	
24	A. Can you be more specific?	
25	Q. Well, is there market demand, in	



Page 104 1 Aaron 2 your opinion, for a 10,000 square foot hypothetical use at this property? I haven't --Α. 5 MR. WALSH: Objection to the form. 7 Α. I haven't tested that. However, 8 I haven't seen much retail development at 9 As of the date of value, retail wasn't doing so great. It had come down quite a 10 11 bit from its high in 2015, 2016, and retail 12 rents were falling, and retail construction 13 was generally challenged. So I don't -- I 14 don't see a lot of that happening in this 15 market area. 16 On page 23, you write: The size 17 differential alone rules out these as 18 reasonable comparables from which to derive 19 a single market rent for a 21,500 square 20 foot property. As such, the gross market 21 rent conclusion for the hypothetical 22 improvements is not reasonably supported and 23 the comparables do not demonstrate any 24 market demand for hypothetical improvements 25 in the market area greater than 5,000 square



Page 105 1 Aaron 2 feet. So 5,000 square feet would be okay, 3 but 10,000 square feet, there isn't 4 sufficient market demand? Is that your 5 conclusion? No, it's not. I didn't conclude 7 that 5,000 square foot stand-alone retail 8 development was financially feasible. Q. Okay. 10 So even a 5,000 square foot 11 retail development might not be financially 12 feasible in your view? Is that the 13 conclusion? 14 I did not test the financial Α. 15 feasibility of small -- small retail other 16 than what the market is showing us in terms 17 of quick service retail sites being 18 purchased for 3 to 4,000 square foot 19 improvements. 20 So you do believe that there's 21 market demand for a 3 to 4,000 square foot 22 quick service restaurant use at the property at 840 Vanderbilt Avenue -- Atlantic Avenue? 23 24 I'm sorry. 25 There's market demand Α. Sure.



Page 106 1 Aaron 2 given an appropriate land cost. And I guess I could qualify that to say given an 3 4 appropriate land cost, there is market 5 demand perhaps for a variety of uses. I understand. 7 On page 30, you criticize 8 Mr. Tener for not considering the value of 9 Vanderbilt's lease with its landlord, and 10 you write under Subject Property Ground 11 Lease, likewise, although neither Tener nor 12 Locatell was provided with the subject property ground lease that was executed on 13 14 November 30, 2017 between Vanderbilt 15 Atlantic Holdings LLC and MMB Associates, 16 the land owner, this lease which runs for 17 99 years with a net present value of 18 \$7 million, provides an important data point and test of reasonableness of the Tener and 19 20 Locatell conclusions. 21 Do you see that? 22 Α. I do. 23 How did you determine that the 24 net present value of that lease was \$7 million? 25 Α. There was a memorandum of lease



Page 107 1 Aaron recorded on public record. 3 Have you ever reviewed the actual lease? 5 Α. I have not. Do you know who signed on behalf 7 of the parties? 8 I believe I've seen the lease. Α. 9 I can't -- I can't recall. 10 Do you know if -- well, have you 11 heard the term arm's length transaction? 12 Α. Absolutely. 13 0. And what does it mean to you? It means that when there's a 14 Α. 15 relationship between -- when there's no 16 relationship between the parties, it's fully 17 arm's length. 18 Do you know if the lease between 19 Vanderbilt Atlantic Holdings LLC and MMB 20 Associates LLC was an arm's length 21 transaction? 22 I don't know -- I don't know 23 that, but that is definitely something that 24 the appraiser should have been permitted to 25 fully investigate.



Page 108 1 Aaron 2 Did you take any steps to fully 0. 3 investigate whether the lease between 4 Vanderbilt Atlantic Holdings, LLC and 5 MMB Holdings, LLC was an arm's length transaction? 7 Α. My report makes no conclusion 8 about whether that lease was an arm's length 9 transaction and I simply have an opinion 10 that the lease is a piece -- important piece 11 of market data, that the appraiser doing a full market value appraisal or market rent 12 13 appraisal should have had access to and 14 should have had the ability to ask the 15 appropriate questions. It's a really 16 important part of the appraisal process and 17 it's important specifically in USPAP that 18 the appraisers be allow -- allowed to 19 specifically analyze any recent transactions 20 and agreements relating to a subject 21 property which occurred within a few years of the valuation end date. 22 23 Q. Okay. 24 If it turns out that the lease 25 between Vanderbilt Atlantic Holdings LLC and



Page 109 1 Aaron 2 MMB Associates LLC was not an arm's length 3 transaction, is it fair to say that that lease should not have been considered in the 5 appraisal reports that Mr. Tener and Ms. Locatell prepared? 7 I can't make a blanket statement Α. 8 I think that even, you know, if it were not arm's length, it would be up to 10 the appraiser to really investigate and find 11 out what the relationship between the 12 parties was and how those numbers in the 13 lease were determined, what consideration 14 the various entities had. I think that the 15 fact that there is a lease agreement of the 16 subject property site as encumbered with the 17 current zoning is very interesting, and if I 18 were appraising the site, I would want to 19 know everything I could possibly know about 20 how the rent of that lease was negotiated 21 between the parties, what the parties' 22 relationships were, what they were at the 23 signing of the lease, and how they -- how 24 the parties were thinking about value of



their site specifically with a potential for

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Page 110 1 Aaron 2 McDonald's to renew the lease. Does Ms. Locatell address the 3 Q. 4 lease between Vanderbilt Atlantic Holdings LLC 5 and MMB Associates LLC in her report? I don't recall. I don't recall. 7 If she had failed to address that lease between Vanderbilt and Atlantic 8 9 Holdings LLC and MMB Associates in her 10 report, would that be a criticism you would 11 have of Ms. Locatell's report? 12 Certainly both reports would 13 benefit from an analysis of this lease, but 14 considering that Tener's clients were 15 parties to the lease, it is more likely that 16 he would be able to get answers to these 17 questions than Sharon Locatell. But yes, 18 absolutely, this should have been reported, the memorandum of the lease or the existence 19 20 of the lease should have been reported in 21 both appraisals. 22 All right. Q. 23 Now, in your report you rely on 24 and cite to Paula Konikoff's book, 25 Appraisers in Arbitration; correct?



Page 111 1 Aaron 2 Α. Yes. 3 Q. And you regard that as an authoritative source on how appraisals 5 should be done? MR. WALSH: Objection to the 7 form. 8 Do you regard that as an authoritative source on how -- on appraisal 10 methodology? 11 MR. WALSH: Objection to the 12 form. 13 0. You can answer. 14 I wouldn't say appraisal 15 methodology; no. I don't think it's an 16 authoritative source on appraisal 17 methodology. 18 What do you think it's an 19 authoritative source for? 20 MR. WALSH: Objection to the 21 form. 22 I think it's --Α. 23 Let me rephrase. Q. 24 Do you think that Appraisals in Arbitration by Paula Konikoff is an 25



Page 112 1 Aaron authoritative source for anything? 3 MR. WALSH: Objection to the form. 5 Q. Do you? I think that Paula Konikoff is 7 an authority in -- or an expert in the 8 considerations that appraisers need to have 9 in mind when working in an arbitration 10 context versus a typical -- arbitration and 11 expert witness. It's a very helpful guide 12 for appraisers who are interested in doing a 13 specific kind of appraisal work in the 14 arbitration and litigation context. 15 So if Ms. Konikoff were to say Ο. 16 something, you would consider it --17 concerning appraisal and arbitration, you would consider it coming from an authority; 18 19 is that fair to say? 20 Yes, she --Α. 21 MR. WALSH: Objection to the 22 form. All right. Well, let's take a 23 24 look at some of the things Ms. Konikoff has 25 to say.



	0010	
		Page 113
1	Aaron	
2	MR. WALSH: And hold on. I	
3	believe you cut Ms. Konikoff on.	
4	MR. KOH: Oh.	
5	MR. WALSH: I don't know. Were	
6	you done answering?	
7	THE WITNESS: I I don't	
8	recall the question at this point.	
9	MR. WALSH: Yes, because I'm	
10	just looking at the transcript, you	
11	said yes, she, I objected and I think	
12	we were talking over each other and	
13	that's the only reason I raise it.	
14	MR. KOH: Let's take a moment to	
15	try to correct that. Thank you.	
16	Q. My question was: So if	
17	Ms. Konikoff were to say something, you	
18	would consider it and then I corrected	
19	myself, concerning appraisal and	
20	arbitration, you would consider it coming	
21	from an authority; is that fair to say? You	
22	began answering yes, she. Then Mr. Walsh	
23	objected. Would you like to continue your	
24	answer?	
25	A. I think that most appraisers	



Page 114 1 Aaron 2 would consider Paula Konikoff to be an 3 authority. 4 Okay. So I've marked and would 5 now like to bring up, and I think I have, maybe I haven't. You should see what's been 7 marked as, and I gave it the wrong Exhibit 8 Number, so I gotta try to change that. Hold 9 on a second. 10 I see it. I see the document. Α. 11 I'm going to republish it with a 12 correct exhibit number because I didn't do 13 that. 14 (Exhibit ZZ, DESCRIPTION, marked 15 for identification, as of this date.) 16 I will now publish it as 17 Exhibit ZZ, which do you see that on your 18 screen? 19 Okay. Yeah. 20 Q. Okay. 21 So I'd like to draw your 22 attention to -- I'm having a little 23 difficulty seeing it here -- the middle of 24 that page where the second paragraph begins: 25 The serious appraisal problem caused by the



Page 115 1 Aaron 2 Overnight decision is that nothing in 3 appraisal standards of practice textbooks or 4 other appraisal reference material helps 5 valuation professionals understand how to value land, quote, subject to the remaining 7 term, close quote, of a ground lease. 8 The basis of a land valuation is 9 the comparison of property being appraised 10 to similarly located parcels of land that 11 have been sold recently and that have been 12 the same or similar -- I'm sorry -- and that 13 have the same or similar highest and best 14 use as the subject land. 15 Do you see that? 16 Α. I do. 17 Q. Okay. 18 So is it fair to say that 19 Ms. Konikoff is pointing out a difficulty in 20 evaluating the value of land that is subject 21 to the remaining term of a ground lease? 22 Yes; but the following two 23 sentences, it's out of context because she 24 continues on to say whereas the appraiser 25 defined a transaction involving the purchase



Page 116 1 Aaron 2 of land by someone knowing that the land can 3 be developed and used only for a limited period of years and then must be returned to 5 the seller. Such sales transactions simply do not exist because that type of 7 arrangement is a lease rather than a sale. 8 So is it -- is it your belief 9 that on the basis of this, that means that 10 Mr. Tener should have evaluated this by 11 looking at comparable leases and not used 12 the standard market -- the standard market 13 data approach technique for valuing vacant 14 land? 15 MR. WALSH: Objection to the 16 form. 17 You can answer. 18 I disagree with your framing of 19 the question because I don't interpret 20 standard market data approach technique 21 to -- that could very well include the 22 analysis of leases of land. I think that 23 both this paragraph and the lease are 24 aligned in instructing appraisers to analyze 25 leases of land based on market data.



Page 117 1 Aaron 2 What in this paragraph leads you 0. 3 to conclude that in the face of this 4 particular option rent term addendum, it 5 would have been appropriate for Mr. Tener to begin his analysis with comparable leases as 7 opposed to land sales? 8 MR. WALSH: Objection to the 9 form. The final sentence of this 10 Α. 11 paragraph says such sales transactions 12 simply do not exist because that type of 13 arrangement is a lease rather than a sale, 14 and I think that Konikoff might be pointing 15 that perhaps the error that Tener made of 16 analyzing land sales with the sales comparison 17 approach, perhaps it's a common error, 18 perhaps it's a common misunderstanding of 19 appraisers that that's the only way you can 20 value land. I don't know. I think that's 21 one of the reasons that she wrote this book, 22 was to help appraisers who aren't 23 experienced in these kinds of arbitration 24 matters involving the value of land as encumbered by the lease. She's offering 25



Page 118 1 Aaron 2 quidance to appraisers that in fact know 3 sales transactions in perpetuity do not 4 satisfy land valuation subject to Overnight. 5 You have to analyze transactions of leases over similar terms. 7 Isn't it fair to say that what 8 this paragraph does is identify a serious 9 appraisal problem caused by the Overnight decision? 10 11 MR. WALSH: Objection to the 12 form. 13 I would agree that the Overnight Α. 14 decision perhaps made appraisers' jobs more 15 challenging. Absolutely. Absolutely. 16 job got harder once appraisers had to 17 account for the encumbrance of the leases. 18 It's much more difficult to appraise 19 property subject to -- vacant land subject 20 to a 20-year term than it is to appraise fee 21 simple vacant land. 22 And because Overnight in your 23 words made the job of the appraiser much 24 more difficult, isn't there room for an



appraiser to decide in or her discretion

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Page 119 1 Aaron 2 what methodology to use? 3 MR. WALSH: Objection to the form. 5 Α. I don't -- I don't understand how one is flowing here from the other in 7 your question. 8 0. In light of this paragraph that 9 we've just read from Ms. Konikoff, isn't it 10 fair to say that the appraiser is charged 11 with using his best description to figure out how to appraise a piece of property that 12 13 is subject to a remaining lease term? 14 Α. I think that the appraiser's 15 discretion becomes less and less of an issue 16 when your appraisal problem is so constrained. 17 If it were simply fee simple vacant land, 18 the appraiser obviously would have many data 19 points and options, do I do the sales 20 comparison approach, do I look at leases of 21 99-year ground leases, do I do a residual, 22 do I do all three and they can support each 23 other. Once you're encumbered by a lease as 24 you are in this case by the remaining term 25 of a lease and the lease language itself



Page 120

- 1 Aaron
- 2 speaks to adjusting comparable leases and
- 3 this paragraph here speaks to comparable
- 4 leases being evidence of a remaining term,
- 5 the appraiser has very little discretion in
- 6 terms of the methods that are appropriate to
- 7 use. Comparable leases need to be
- 8 researched and adjusted if they exist.
- 9 Q. Is it true that the comparable
- 10 leases must be consistent with the -- that
- 11 are -- let me rephrase that.
- 12 When an appraiser chooses a
- 13 comparable, isn't it true that that
- 14 comparable has to be consistent with what
- 15 the appraiser has established as the highest
- 16 and best use for the property?
- 17 A. Generally, yes. Or that the
- 18 market has established is the highest and
- 19 best use, the appraiser has concluded based
- 20 upon market evidence.
- 21 Q. One of the things you've
- 22 criticized Mr. Tener for was that he didn't
- 23 have any comparables for the highest and
- 24 best use that he had determined for the
- 25 property; is that correct?



Page 121 1 Aaron 2 Α. Yes. 3 And doesn't Ms. Konikoff support 0. 4 that conclusion by saying such sales 5 transactions simply do not exist? Well, she's saying the sales 7 approach is no longer appropriate often in 8 these cases. Q. So --10 So I'm not saying that he would Α. 11 have found comparable sales; no. 12 You're saying that given the 13 language of the lease, Mr. Tener should have 14 simply looked for lease comparables for the 15 highest and best use and not done an 16 evaluation of the standard market data 17 approach for valuing vacant land? That's 18 what you're saying? 19 Α. I'm --20 MR. WALSH: Object to the form 21 of the question. 22 I'm absolutely not accepting 23 your reading, your implied reading of standard market value data -- value --24 25 whatever the phrase is -- standard market



Page 122 1 Aaron 2 value data technique. That to me does not 3 indicate the sales comparison approach of sales. That is not what that means to me, 5 I've never heard that phrase, but it has the words market data technique, approach and 7 technique, so leases are market data, too, 8 and right after that, in the lease, in the 9 Option Rent Addendum, it specifically 10 instructs the appraiser to analyze and 11 adjust leases. So I don't see -- I don't 12 see any contradiction with excluding the 13 sales comparison approach in this and the 14 language of the lease. 15 So is it your interpretation 16 that the way that Mr. Tener apparently read 17 this lease was unreasonable? 18 MR. WALSH: Objection to the 19 form. 20 I have no idea how Mr. Tener 21 read -- read this language. I am making my 22 own reading of the language. And based upon my reading, I see no instruction to do the 23 24 sales comparison approach of vacant land. 25 Q. And anybody who read the same



Page 123 1 Aaron 2 language and went ahead and did a sales 3 comparison approach, would they be behaving 4 unreasonably? 5 MR. WALSH: Objection to the form. 7 I can't speak for anybody --Α. 8 anybody in general. I don't -- there's no 9 such thing as a sale of a property for a 10 20-year term that I'm aware of other than a 11 lease, you know, so yeah, it's not 12 appropriate to this -- this appraisal 13 problem to do a sales comparison approach of 14 a fee simple sales transaction. 15 Q. I'm bringing up a document 16 previously marked as Exhibit H. 17 Have you ever seen this document 18 before? 19 This is the report by appraisers 20 and planners, and this one is the prior 21 version -- prior appraisal by appraisers and 22 planners, not the final version that I reviewed in detail, but I have seen this 23 document before. 24 25 Q. Okay.



Page 124 1 Aaron 2 And this is an evaluation of 3 840 Atlantic Avenue that uses the sales comparison approach; correct? 4 5 Α. It does; yes. And how many comps did 7 Ms. Locatell identify? 8 MR. WALSH: Objection to the 9 form. 10 In the report, how many comps of 11 comparison land sales does it show? 12 Four. 13 0. In your view, is that a sufficient number of comparables? 14 15 I did not perform an appraisal 16 review of this appraisal report. 17 Do you have any view of whether 18 the four land sales comparables that Ms. Locatell used in this appraisal were 19 20 appropriate? 21 MR. WALSH: Objection to the 22 form. 23 I don't. I don't have any Α. 24 opinion about this appraisal report. 25 Q. And what were the square



Page 125 1 Aaron 2 footages of each of the properties that 3 Ms. Locatell chose in this review? 4 The site size is 21,993, 27,000, 5 22,883 and 5,000. Q. Okay. 7 And you haven't formed an 8 opinion as to whether those were appropriate 9 comparables? 10 Well, as I said, for valuation 11 subject to the lease, the land sale 12 comparison approach is not appropriate. 13 What did Ms. Locatell concern 0. 14 about the land sale -- conclude about the land sale value of 840 Atlantic Avenue when 15 16 she rendered this particular report which 17 we've marked as Exhibit H? 18 MR. WALSH: Objection to the 19 form. 20 Are you asking me to read her 21 value conclusion on page 9 of the PDF? 22 I am. I'm asking you, isn't it true that Ms. Locatell concluded the land 23 was worth \$9.9 million? 24 25 MR. WALSH: Objection to the



Page 126 1 Aaron 2 form. 3 Α. That appears to be the 4 conclusion of this appraisal report. 5 Q. And she then in order to compute the fair market rent used multiple -- rent 7 multipliers ranging from 4% to 6%; isn't 8 that right? MR. WALSH: Objection to the 10 form. 11 That appears to be correct. Α. 12 And she concluded that the rent range would run from \$396,000 to \$594,000; 13 14 right? 15 MR. WALSH: Objection to the form. 16 17 That is the conclusion of 18 what -- of this report; yes. 19 Q. Okay. 20 How, if at all, did this report 21 that you reviewed prior to rendering your 22 report affect your conclusion in your reports? 23 MR. WALSH: Objection to the 24 form. 25 Α. Not at all.



Page 127 1 Aaron 2 And why didn't it affect your Q. conclusion? 3 4 Because this was not the report Α. 5 that was part of my scope of work to review. What did Ms. Locatell conclude 7 that the fair market rental value was for 8 this property? In this report? Α. 10 In her -- in the report that you 11 did review. 12 I would have to look 13 specifically, but it was somewhere between 3 and -- I think 350,000 -- \$350,000, in 14 15 that range. 16 Q. Okay. 17 And in this report, even the 18 lowest range she reports is almost \$400,000; 19 right? 20 MR. WALSH: Objection to the 21 form. 22 That's the range in this report. 23 This appears to be a completely different 24 scope of work. 25 Q. So the scope of work can affect



Page 128 1 Aaron 2 what the fair market rent is? 3 Α. Of course. The scope of work 4 determines -- is determined by the appraisal 5 problem, and this one doesn't seem to be compliant with the language of the lease and 7 the encumbrance of the lease either. 8 0. So appraisals can come up with different valuations for fair market rent 9 10 depending upon how the appraiser or the 11 lease defines the scope of work; is that 12 correct? 13 Α. Yeah. Well, okay, the -- the appraiser defines -- the appraiser 14 15 determines the scope of work based upon, 16 quote, unquote, the appraisal problem, which 17 is constrained by the language of the lease. 18 So yes, different leases have different 19 language and that would result in different 20 appraisal problems which would then result 21 in different scope of work which would then 22 result in different values. 23 And whose job is it to determine 24 what the scope of work should be?



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MR. WALSH: Objection to the

Page 129 1 Aaron 2 form. It's absolutely the appraiser's 3 Α. 4 job to determine the appropriate scope of 5 work given the appraisal problem. I'd like to bring up a document 7 previously marked in this proceeding as 8 Exhibit M as in Mike. And my question to 9 you is: Have you seen Exhibit M before? 10 Α. I'm waiting for it to appear. 11 Let me know when you have it. 0. 12 I don't have it. Α. 13 You may want to refresh your 0. 14 screen. 15 It's not on mine. Are other Α. 16 people seeing this? 17 MR. WALSH: I have not seen it 18 yet. 19 MR. KOH: Josh, what do I do? 20 MAGNA TECH: You might have to 21 just reveal it. If it was previously 22 marked --23 I have hit reveal. MR. KOH: 24 Oh, wait. Let me see. Now it should 25 be going.



Page 130 1 Aaron 2 Α. Yes, I see it now. 3 MR. WALSH: I can see it now. MAGNA TECH: There it is. 5 Q. I thought I revealed it, but apparently that didn't happen. There you 7 go. Now that you can see what I'm talking 8 about, have you seen Exhibit M before, M as in Mike? 9 10 (Witness reviewing document.) 11 I've never seen this document as Α. 12 far as I'm aware. 13 Do you know what it is? Q. 14 I don't. Α. 15 Ο. Looking at this document, would 16 you have liked to have seen it before you 17 completed your opinion of Mr. Tener's and 18 Ms. Locatell's work? 19 MR. WALSH: Objection to the 20 form. 21 I don't know what this 22 document is. 23 Can you answer that question? I don't know what this document 24 Α. 25 is, so I can't say whether I would have



Page 131 1 Aaron 2 wanted to see it. 3 Q. This is a document whereby 4 McDonald's approved the exercise of the 5 option rent term for its restaurant at 840 Atlantic Avenue. 7 Α. Okay. 8 And in doing so, it does some 9 analysis of the perspective fair market 10 rent. Would you have liked to have seen 11 that document before you rendered your 12 report? 13 MR. WALSH: Objection to the 14 form and your characterization of the 15 document. 16 I'm not sure I -- this -- this 17 is not typical for an appraiser to see when 18 they do an appraisal review, so no, I don't 19 need this, to have seen this document. 20 Q. If McDonald's had made an 21 analysis of what the fair market rent of the 22 property at 840 Atlantic Avenue should be, 23 would you have liked to have seen that 24 document before completing your report? 25 MR. WALSH: Objection to the



		Page 132
1	Aaron	
2	form.	
3	A. It wouldn't have hurt to see it,	
4	but I don't see it changing anything in my	
5	report.	
6	Q. One of the things your report	
7	relies upon is the Appraisal of Real Estate	
8	14th Edition; correct?	
9	A. Correct.	
10	MR. KOH: Josh, can you bring	
11	that up for me and mark it as Exhibit	
12	AAA, alpha alpha?	
13	MAGNA TECH: Bringing	
14	MR. KOH: I'm sorry. The	
15	document that's labeled 14th Edition	
16	Table 17.1.	
17	MAGNA TECH: So if you look at	
18	the top of your screen	
19	MR. KOH: Yes?	
20	MAGNA TECH: do you have the	
21	ability to give me controls?	
22	MR. KOH: Somewhere I do.	
23	MAGNA TECH: Because at this	
24	very second, I don't want to waste	
25	everyone's time, but at the moment I	



		1
		Page 133
1	Aaron	
2	don't have the ability to mark.	
3	MR. KOH: Hot seat controls?	
4	No. Pass control. Yes. I'm passing	
5	to you.	
6	MAGNA TECH: Great. Okay. And	
7	you wanted this marked as?	
8	MR. KOH: AAA.	
9	(Exhibit AAA, Appraisal of Real	
10	Estate 14th Edition Table 17.1, marked	
11	for identification, as of this date.)	
12	MAGNA TECH: There you go. It	
13	should be available now.	
14	MR. KOH: Okay.	
15	Q. Do we see that?	
16	A. Mm-hmm.	
17	Q. Okay.	
18	A. I'm trying to	
19	MAGNA TECH: Just confirming, it	
20	was 14th Edition, Table 17.1; correct?	
21	MR. KOH: Right.	
22	MAGNA TECH: Okay.	
23	Q. This is a copy of Table 17.1	
24	from the 14th Edition of the Appraisal of	
25	Real Estate.	



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			Page 1	134
	1	Aaron		
	2	Have you seen this table before?		
	3	A. Yes.		
	4	Q. And this table is a table of		
	5	various valuation methods?		
	6	A. Yes.		
	7	Q. And it says sales comp		
	8	comparison is the most common technique for		
	9	valuing sites and is the preferred method		
	10	when comparable sales are available?		
	11	A. Absolutely. That is true.		
	12	Q. Yet you criticize Mr. Tener for		
	13	using the most common and preferred method		
	14	in his report.		
	15	MR. WALSH: Objection to the		
	16	form.		
	17	A. Well, that's because the		
	18	comparable sales were for an entirely		
	19	different property rights than the appraisal		
	20	problem required subject to the lease.		
	21	Q. And is that something that a		
	22	competent appraiser would have been able to		
	23	determine a competent neutral would have		
	24	been able to determine?		
	25	MR. WALSH: Objection to the		



Page 135 1 Aaron 2 form. 3 Α. Competent -- yes. A hundred 4 percent. 5 Q. One of the things you testified about earlier is that an appraiser is 7 charged with surveying the market, and I 8 want to make sure I got this right, 9 surveying the market before determining what 10 the highest and best use is; is that correct? 11 Α. Yes. 12 MR. KOH: Josh, can you bring up 13 page 44 from the 14th Edition? 14 MAGNA TECH: Yes. And what 15 would you like this marked as? 16 MR. KOH: BBB. 17 (Exhibit BBB, Appraisal of Real 18 Estate 14th Edition page 44, marked for 19 identification, as of this date.) 20 Do you have that in front of you? Q. 21 Α. I do. 22 Doesn't this table indicate that 23 you first have to identify the client and 24 intended uses as well as the purpose of the assignment and the effective date and the 25



Page 136 1 Aaron 2 relevant characteristics and the conditions and then collect the data? MR. WALSH: Objection to the 5 form. Well, yes, yes. Absolutely. 7 You collect the data after the intended user 8 and intended use and the purpose of the 9 assignment and all those things, they help 10 you identify the appraisal problem. 11 Absolutely. 12 Q. Okay. 13 So the first step then is to 14 identify the intended -- the intended use; 15 right? 16 Α. Yes. 17 MR. WALSH: Objection to the 18 form. 19 And in this case, there was a 0. 20 dispute over what the intended highest and 21 best use should be; is that correct? 22 MR. WALSH: Objection to the 23 form. 24 Α. I think you may be getting 25 confused between two appraisal terms.



Page 137 1 Aaron 2 of them is intended use of the appraisal 3 report and one of them is highest and best 4 So for this, the intended use is, you 5 know, a ground rent determination pursuant to a lease whereas the highest and best use 7 is whatever use is most financially feasible 8 subject to the language in the lease and the 9 constraints of property rights and encumbrance 10 of the lease. But yes, you must -- the 11 appraisal problem is defined by what's the 12 context of this appraisal report, what's the 13 intended use of this appraisal report, and 14 so I see that one of the things that 15 happened here and I can see in the Tener 16 deposition and the work file and the 17 e-mails, that part of the problem with the 18 Tener report is that the appraisal problem 19 was defined improperly at the beginning of 20 the assignment, and so then the scope of 21 work and the data collection all flowed from 22 the wrong appraisal problem, which was fee simple valuation of the land using the sales 23 24 comparison, you know, what's the fee simple 25 value of the land, what's the rent of the



Page 138 1 Aaron 2 land in perpetuity. I see that he did quite a bit of work collecting sales comps, doing 4 adjustments, doing analysis of the wrong 5 appraisal problem. I mean, it was not permitted based on Overnight and Second 7 Avenue and the lease's instruction to 8 analyze leases and not sales. And then at a 9 certain point, kind of late in the game as 10 it goes for arbitrations, it was determined 11 that -- it was included or agreed by all the parties that in fact the appraisal problem 12 13 was not fee simple valuation of the land, it was valuation subject to the encumbrance of 14 15 the lease, and I really sympathize with the 16 appraiser's challenge at that point because 17 once the appraisal problem changed 18 completely, it kind of forces the appraiser 19 to start over and get entirely different 20 types of comparables, do an entirely 21 different type of research and have a 22 different scope of work, and so I understand 23 the inclination to try to just tack 24 something on to the original analysis 25 that's, quote, unquote, supportive and kind



Page 139 1 Aaron 2 of get it done or make it work, but that's -- that can't happen, I mean, it's just -- it's a different appraisal problem, 5 it's a different property rights, it's different sales or it's not sale, it's 7 different leases and comps and it's a whole 8 bunch of different work. So this -- this 9 chart that you're showing really outlines 10 the challenges of this assignment, it's not 11 easy to do this work, it's not easy to 12 figure out the highest and best use subject 13 to a lease, and, you know, also scope of 14 work is negotiated between appraisers and 15 clients, and so when your clients are giving 16 you certain instructions, it's a very -- it 17 can be a lot -- there can be a lot of 18 tension to make sure that you're producing a 19 credible appraisal report and you're doing 20 the appropriate scope of work to solve the 21 problem -- the appropriate -- the appraisal But it's on the appraiser to make 22 23 sure that that all happens the way it's, you 24 know, the way it's outlined in this chart. 25 Q. Given the difficulty of this



Page 140 1 Aaron 2 problem, isn't it possible that two 3 appraisers both proceeding in good faith 4 could have come up with a different approach 5 to the appraisal problem? MR. WALSH: Objection to the 7 form. 8 Α. Well, unfortunately there's very 9 few approaches that could -- there's only 10 one that I'm aware of that complies with the 11 lease and the encumbrance of the lease and 12 that's adjusting comparable rentals of land. 13 So very hard. I'm not saying it's easy, 14 it's very difficult. These rentals are few 15 and far between. They are not easy to find. 16 They're not something that you can find by 17 searching CoStar usually. Sometimes they're 18 there. They're not -- sometimes you have 19 to -- it's a hard assignment, so I actually 20 don't think different appraisers would come 21 up with different approaches to solve this 22 particular appraisal problem, but I think that the appraisal problem was misunderstood 23 24 perhaps by parties in this matter for a 25 good -- a good part of the timeline that



Page 141 1 Aaron 2 they were working on the assignment. 3 What do you believe to be the 4 source of that misunderstanding? 5 MR. WALSH: Objection to the form. 7 I couldn't possibly say. Α. 8 wasn't party to those discussions. 9 All right. I would like to take Q. 10 a break now and let's come back at 1:00, 11 please. 12 MR. WALSH: 2:00 you mean? 13 MR. KOH: 2:00; right. 14 MR. WALSH: All right. 15 (Whereupon, a brief recess was 16 taken.) 17 MR. KOH: At this point, I've 18 asked the questions I'd like to ask of 19 Ms. Aaron. 20 Mr. Walsh, do you have any 21 questions? 22 MR. WALSH: I do not have any 23 questions. 24 MR. KOH: Then thank you for 25 coming in, Ms. Aaron. Apology for the



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	4005	
		Page 142
1	Aaron	
2	technical difficulties at times and	
3	this deposition is concluded.	
4	Thank you, Josh, for jumping in.	
5	MAGNA TECH: No problem at all.	
6	It was my pleasure.	
7	MR. KOH: Okay.	
8	MR. WALSH: Thank you, Josh.	
9	Thank you, Robin. Thank you, Howard.	
10	(Time noted: 2:02 p.m.)	
11		
12		
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25		



		Page	143
1			
2	ACKNOWLEDGEMENT		
3			
4	I, AMANDA AARON, hereby		
5	certify that I have read the transcript		
6	of my testimony taken under oath in my		
7	deposition of January 21, 2022; that		
8	the transcript is a true, complete and		
9	correct record of what was asked,		
10	answered and said during this		
11	deposition, and that the answers on the		
12	record as given by me are true and		
13	correct.		
14			
15			
16			
	AMANDA AARON		
17			
18			
	Subscribed and sworn to		
19			
	before me this day		
20			
	of, 2006.		
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6				
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		Amanda Aaron		
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 2
              CERTIFICATE
 3
     STATE OF NEW YORK
 4
                             ) ss.:
 5
     COUNTY OF NASSAU
 6
                 I, ROBIN LaFEMINA, a Registered
 7
     Professional Reporter, Certified LiveNote
     Reporter and Notary Public, do hereby
 9
     certify:
10
                 That AMANDA AARON, the witness
11
     whose deposition is hereinbefore set forth,
12
     was duly sworn by me and that such deposition
13
     is a true record of the testimony given by
14
     such witness.
15
                 I further certify that I am not
16
     related to any of the parties to this action
17
    by blood or marriage; and that I am in no
18
     way interested in the outcome of this matter.
19
                 IN WITNESS WHEREOF, I have
20
     hereunto set my hand this day of
2.1
     2022.
2.2
23
                        Robin Lafemina
24
                         ROBIN LaFEMINA
25
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